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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Fourth periodic reports of States parties due in 1994

Addendum

ROMANIA 1/ 2/

[26 April 1996]

1/ For the third periodic report submitted by the Romanian Government, see CCPR/C/58/Add.15; for its consideration by the Committee, see the summary records CCPR/C/SR.1284-SR.1286 and Official Records of the General Assembly, Forty-ninth Session, Supplement No. 40 (A/49/40), paras. 132-149.

2/ The information submitted by Romania in accordance with the guidelines concerning the initial part of reports of States parties is contained in the core document (HRI/CORE/1/Add.13/Rev.1).

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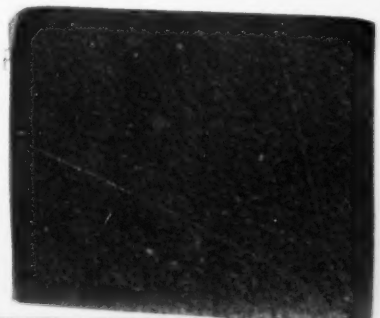

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Introduction

1. The third periodic report of Romania (CCPR/C/58/Add.15), submitted to the Human Rights Committee in 1992, was considered by the Committee in November 1993. Submission of the fourth periodic report, scheduled for the end of 1994, was postponed so as to enable the Romanian authorities to give full coverage therein to the new developments in Romania in the fields of legislation, judicial and institutional practice in the years since the oral presentation of the previous report.

2. The present report has been prepared in accordance with the Guidelines regarding the Form and Contents of Periodic Reports from States Parties (CCPR/C/20/Rev.1) and the General Comments adopted by the Human Rights Committee in accordance with article 40, paragraph 4, of the International Covenant on Civil and Political Rights (CCPR/C/21/Rev.1 and Add. 1-4). Account has also been taken of the recommendations made by the Human Rights Committee following its consideration of the third periodic report.

I. GENERAL CONSIDERATIONS

3. The third periodic report of Romania (CCPR/C/58/Add.15), submitted to the Human Rights Committee in 1992, was supplemented by the core document comprising the first part of the reports of States parties (HRI/CORE/1/Add.13). One of the chapters of that document was devoted to the judicial bodies; however, since the drafting of the core document this area has undergone significant transformations and changes following the adoption of Act No. 92/1992, on the organization of the judicial system (the Organization of Justice Act), Act No. 54/1993, on the organization of military courts and prosecution services, and Act No. 56/1993, on the Supreme Court of Justice. The creation of the new courts, and in particular the re-establishment of the courts of appeal, has necessitated a new division of material and territorial jurisdictions, implemented through the Code of Criminal Procedure (Amendment) Act (Act No. 45/1993) and the Code of Civil Procedure (Amendment) Act (Act No. 59/1993).

4. The new regulations concerning the system of organization and the functioning of the judicial bodies are described in detail in the revised version of the core document (HRI/CORE/1/Add.13/Rev.1), to which the Committee is referred.

5. The second part of the present report describes the legislative changes that took place between the years 1992 and 1995 where they affect the application of the provisions of the Covenant, and, in particular, of article 2, paragraphs 3 (b) and (c) and article 14, paragraphs 1 to 5.

II. INFORMATION ON APPLICATION OF ARTICLES 1 to 27 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Article 1

Paragraph 1

6. The third periodic report of Romania (CCPR/C/58/Add.15) described in detail the constitutional provisions establishing the right of the Romanian people to self-determination.

7. Legislative and presidential elections are held every four years in Romania. The Romanian Parliament consists of two chambers, the Chamber of Deputies and the Senate, elected by Romanian citizens over 18 years of age, by universal, equal, direct, secret and freely expressed vote, pursuant to the terms of the Electoral Act. General elections are also held every four years to establish the local public administrative structures (local councils and mayors), pursuant to the terms of the Electoral Act.

8. The most recent legislative elections took place on 27 September 1992. Subsequently, 13 political parties gained seats in the Romanian Parliament. In the same year local and presidential elections were held in February and September respectively. For more detailed information on this question see the remarks concerning application of article 25 elsewhere in this report.

Paragraphs 2 and 3

9. Regarding the application of article 1, paragraphs 2 and 3, of the Covenant, the principles evoked and comments made when preparing the third periodic report of Romania remain valid. With regard to the General Comments adopted by the Human Rights Committee in April 1989 (CCPR/C/21/Rev.1, General Comment 12 [21]), it should be pointed out that Romania is not exposed to any factors or difficulties preventing it from freely disposing of its natural wealth and resources, in violation of the provisions of article 1, paragraph 2, of the Covenant.

10. In the spirit of its international commitments, Romania recognizes the right of all peoples freely to dispose of their natural wealth and resources, and considers that the exercise of that right entails obligations for each State and for the international community as a whole.

Article 2

Paragraph 1

11. Having regard to the General Comments adopted by the Committee in April and November 1989 (CCPR/C/21/Rev.1 and Add.1), it should be stressed that all Romanian legislation intended to implement the rights recognized by the Covenant is founded on the principle of non-discrimination among and equality of citizens, proclaimed in articles 4 (2) and 16 (1) and (2) of the Romanian Constitution.

12. A comparison of article 2, paragraph 1, of the Covenant with article 4 (2) of the Romanian Constitution reveals only a few insignificant differences between the two texts, concerning the order in which the criteria for non-discrimination are listed in the Covenant, namely: "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"; whereas the corresponding text in the Romanian Constitution reads: "without any distinction on account of race, nationality, ethnic origin, language, religion, sex, opinion, political allegiance, wealth or social background".

13. Article 16 of the Constitution proclaims the general principle of equality of rights of citizens, providing a few explanations of how guarantees of the exercise of that right are to be understood. The text provides that "citizens are equal" not only "before the law", but also "before... public authorities", "with no discrimination", but also "with no privileges". These requirements are reinforced by paragraph 2 of the article, which provides that "no one is above the law".

14. The principle of equality of citizens' rights before the public authorities is also applicable to foreign citizens and stateless persons living in Romania, who, under article 18 (1) of the Constitution, "shall enjoy general protection of their person and assets, as guaranteed by the Constitution and other laws".

15. The exercise of any right may be limited only by statutory provisions consistent with the restrictions considered as admissible in the international texts. Article 49 of the Constitution provides that:

> "1. The exercise of certain rights or freedoms may be restricted only by law, and only if absolutely unavoidable, as the case may be, for: the defence of national security, public order, health or morals, of the citizens' rights and freedoms; as required for conducting a criminal investigation; and for the prevention of the consequences of a natural disaster or particularly severe catastrophe.
>
> 2. The restriction shall be in proportion to the situation that determined it and may not be prejudicial to the existence of the respective right or freedom."

16. The specific circumstances in which the exercise of certain rights and freedoms may be limited are provided for in the Constitution in the following terms:

(a) article 23 (2) allows "search, detainment or arrest of a person [...] only in the cases and under the procedure provided by law";

(b) article 26 (2) recognizes the right of every individual "to determine his own actions, subject to his not thereby infringing the rights and freedoms of others, public order or public morals";

(c) article 27 (2) specifies the situations in which derogations from the principle of the inviolability of the domicile or residence are permitted;

(d) article 30 (6) provides that "freedom of expression shall not be prejudicial to dignity, honour or privacy of person, or to the right to respect for the individual", while article 30 (7) prohibits "any defamation of the country and the nation, exhortation to wars of aggression, national, racial, class or religious hatred, incitement to discrimination, territorial separatism or public violence, and obscene conduct contrary to public morals";

(e) article 31 (3) provides that "the right to information shall not be prejudicial to the protection of the young or to national security";

(f) article 36 proclaims the right to participate in gatherings, demonstrations and parades, which may be organized and held "only peaceably and without weapons of any kind";

(g) article 37 (4) prohibits "secret associations".

All these constitutional restrictions are applicable to Romanian citizens and to any other individual present in the territory of Romania, without any distinction of race, nationality, language, religion, sex, political opinion, etc.

Paragraph 2

17. With respect to the Committee's recommendation that the reports of States parties should refer to factors and difficulties preventing the exercise of the rights recognized in the Covenant, it can be said that generally speaking the measures taken in Romania in application of the provisions of the Covenant have provided an appropriate legislative framework that enables the competent judicial authorities to ensure that persons whose rights have been violated are again able to enjoy their rights, and that the guilty parties are punished.

18. However, problems have been noted in the process designed to guarantee the civil rights of certain categories of person, particularly as regards the right to property and, more specifically, the question of restitution and compensation claimed by persons whose property (land, buildings etc.) were nationalized or confiscated by the Communist regime. Attempts to regulate the conditions required to re-establish the right to ownership of land and to compensate former owners of buildings have only partially succeeded in dealing with the extremely numerous and varied situations in which owners deprived of their rights over the past fifty years find themselves. Consequently, there is reason to expect that the judicial bodies will be faced with similar difficulties in the future, arising from various individual cases of wrongful application of the law or cases not covered by the provisions of the laws on land and buildings adopted in 1991 and 1995 respectively.

Paragraph 3 (a)

19. The legislative framework established in Romania to ensure effective judicial remedies for any person whose rights and freedoms recognized by the Covenant have been violated, including cases in which the violation was committed by persons acting in an official capacity, was described in the third periodic report of Romania (CCPR/C/58/Add.15).

20. The large number of petitions to the courts or (where appropriate) to the administrative or other authorities empowered to deal with these matters shows that individuals are familiar with their rights and resolved to exercise them, if necessary by means of an effective remedy, to which reference is made in article 2 of the Covenant.

21. The Administrative Litigation Act (Act No. 929/1990) was a response to the need to guarantee access to justice for any person whose rights recognized by the law have been violated by an administrative authority or by persons acting in an official capacity. Over the five years of application of this Act a substantial volume of case law has accumulated, including judicial proceedings brought against decisions and orders by the Prefects, who represent the Government at the level of the country's 40 departments, and the municipality of Bucharest. Unlawful administrative acts have been annulled by the judicial bodies, thereby restoring the rights of the persons concerned.

22. The practice of the Administrative Litigation Division of the Supreme Court has confirmed most of the decisions delivered by the courts (since 1991) and by the courts of appeal (since 1993), both as regards the annulment of certain administrative acts (Supreme Court, Decisions Nos. 292/1994 and 328/1994) and as regards the irrevocability of certain administrative acts executed (Supreme Court Decision No. 15/1994).

23. The Administrative Litigation Act has also made it possible to carry out a judicial review of orders to suspend some mayors from their duties. In cases where the complaints by the mayors have proved well-founded, the bodies exercising primary jurisdiction have ordered the annulment of the suspension orders, and their decisions have been confirmed by the Supreme Court (Supreme Court, Decision No. 427/1994). Conversely, in cases where the mayor's complaint has proved ill-founded, the bodies exercising primary jurisdiction and the courts of appeal have upheld the suspension ordered by the Prefect (Supreme Court, Decision No. 208/1994).

Paragraph 3 (b)

24. The Romanian State's commitment to ensuring that the competent authority provided for by its legal system shall determine the rights of the person availing himself of the judicial remedy is expressed, inter alia, in the provisions of the Administrative Litigation Act. Under the terms of that Act, the fact that an administrative authority fails to reply to a registered petition within 30 days constitutes an unjustified refusal to deal with the matter that is subject of the petition and confers on the person whose rights under the law have been infringed the possibility of bringing the matter before a court. These provisions have had a positive influence on the speed with which measures have been taken to respond to petitions submitted by citizens, and in most cases the responsible authorities are now appointed within the prescribed time limit.

25. Judicial review has also been introduced in connection with the establishment of rights to social security benefits granted by the State, an area in which decisions were hitherto subject only to administrative review by hierarchical procedures. Now, through the courts, it is possible to annul decisions on retirement taken in violation of the rules concerning the duration

of a worker's period of activity, which determines the amount of the social security benefit. The judicial bodies are also empowered to oblige the retirement commissions to recalculate the amount of the retirement benefit, in accordance with the rules of enacted law (Supreme Court Decisions Nos. 351/1994 and 379/1994).

26. The legislature's interest in developing the possibilities of judicial remedy goes hand in hand with its desire to re-establish the three degrees of jurisdiction that existed in the judicial system prior to 1948. Under the terms of the Organization of Justice Act (Act No. 92/1992), followed by Acts Nos. 45/1993 and 59/1993 modifying and supplementing the Code of Criminal Procedure and the Code of Civil Procedure respectively, concurrently with the re-establishment of the courts of appeal two general remedies have been introduced, namely, appeal, and application for remedy.

27. In order to enable those concerned to avail themselves of the two general remedies, Act No. 59/1993 modifying and supplementing the Code of Criminal Procedure provided that general remedies in the process of being settled at the moment of entry into force of the Act shall be regarded as appeals, so that, once the case has been settled, they may be the subject of an application for remedy, lodged within 15 days of the date of notification.

28. With the same aim in mind, provision was also made for the possibility of considering applications for remedy as appeals, in connection with cases settled by final decisions delivered in the course of the period of one year preceding the adoption of the Act, so as to enable the parties to avail themselves of the second remedy before a higher body. Subsequently that period was extended to the date of entry into force of Act No. 59/1993; that is, to a total of 13 months (from 30 June 1992 to 26 July 1993). In practice, this method of regulating applications for remedy has led to a major advance in judicial supervision at two levels, with, as its corollary, verification and, where appropriate, modification or annulment of the decisions taken by the courts of first instance and the departmental courts in misapplication of the law. This approach was also facilitated by the establishment of an exceptional 60-day time limit for the parties, replacing the ordinary 15-day time limit for filing the application for remedy.

29. Act No. 59/1993 also developed the possibilities of judicial remedy in connection with restoration of the right of ownership of land relinquished to State agricultural cooperatives and agricultural enterprises under the Communist regime. Under the terms of the Land Act (Act No. 18/1991), an initial remedy was provided against decisions of the local committees qualified to decide on petitions for restoration of ownership, in the form of a claim addressed to the departmental committee acting as the higher administrative authority responsible for monitoring application of the Act. This first remedy was backed up by a second, judicial, remedy in the form of a petition lodged with the court of first instance, appealing against the departmental committee's decision. Act No. 59/1993 also gave the petitioner the right to bring an application for remedy before the court against the decision of the court of first instance.

30. With regard to the matter regulated by the Land Act (Act No. 18/1991), Act No. 59/1993 modifying the Code of Civil Procedure established two exceptions in

favour of petitioners. Thus, as an exception to the principle of non-retroactivity of the law, provision was made for the possibility of bringing an application for remedy against any decision delivered by the judges pursuant to Act No. 18/1991 (i.e. within a period of two years); and, as an exception to the ordinary time limit for bringing an application for remedy, a 90-day time limit was established to enable persons who consider that their rights under the Land Act have been violated to bring such an application before the court, against the decision of the court of first instance.

31. In criminal proceedings, the lodging of the appeal as an initial general remedy, pursuant to Act No. 45/1993 modifying the Code of Criminal Procedure, has resulted in broad application of the provisions of that Act, in accordance with the principle of the more favourable law. Consequently, applications for remedy that were in the process of being settled at the moment of entry into force of Act No. 45/1993 were considered as appeals, as provided for by article 361 of the Code, and decisions taken by the courts on appeal could be contested through applications for general remedy in the higher courts. Act No. 45/1993 also established that in the case of judgements to be delivered on applications for reconsideration of the facts or annulment proceedings, the remedies provided for by that Act will be available. All the time limits established for filing applications for general remedy in force on 1 July 1993 were readopted thereafter.

32. Application of the provisions of the two Acts modifying the Code of Civil Procedure and the Code of Criminal Procedure respectively led to a considerable increase in activities during 1993 and 1994, calling for special efforts on the part of judges to ensure that decisions were taken within a reasonable period of time.

33. In connection with application of article 2 of the Covenant, it should also be mentioned that the Supreme Court seeks to ensure full consideration and settlement of any petition submitted to the competent judicial bodies, in the spirit of the requirements of paragraph 3 (b) of that article. In this regard one can cite, first, the settlement of disputes as to jurisdiction between judicial bodies where both refuse jurisdiction, either as regards territorial jurisdiction (between bodies of the same status), or as regards jurisdiction ratione materiae (between courts of first instance, as civil courts of general jurisdiction, and the administrative litigation divisions of the departmental courts).

34. Settlement of disputes as to jurisdiction between judicial bodies and other quasi-judicial organs where both refuse jurisdiction has made it possible to carry out a judicial review of the actions intended to reject the jurisdiction of non-judicial authorities such as the Jurisdictional Board of the Court of Auditors or the trade arbitration body attached to the Chamber of Commerce and Industry.

35. The judgements rendered have made it possible to avoid situations whereby petitions by persons who have complained of violations of rights recognized by law remain unresolved as a result of successive actions to reject jurisdiction. These judgements have obliged the judicial, administrative or other authorities exercising jurisdiction by virtue of domestic legislation to rule on the rights of the persons in question (Supreme Court Decisions Nos. 448/1994 and 116/1995).

36. At the same time, the decisions of the Supreme Court have taken account of the obligation incumbent on the judicial bodies to pronounce on all aspects of the petition, that is, on all the rights claimed by the parties, including those claimed by means of counter-claims. For example, finding that the court of first instance had ruled on an application for divorce filed by the husband but had failed simultaneously to rule on the counter-application by the wife requesting that she be assigned the tenancy agreement - a claim based, inter alia, on the state of invalidity that had arisen in the course of the marriage - the Supreme Court annulled both the decision of the court of first instance and that of the court of appeal, regarding them as fundamentally unlawful. The case was referred back to the court of first instance to be reheard (Supreme Court, Civil Division, Decision No. 2399/1993).

Paragraph 3 (c)

37. With regard to enforcement by the authorities of such remedies when granted, a few examples taken from judicial practice may be pertinent.

38. Mention has already been made, in paragraphs 29 and 30 of this report, of the right of the judicial bodies to review the administrative decisions taken by the committees set up to implement the Land Act. A refusal by the committee to respect the court decision and to issue the legal document required is a situation covered by the Administrative Litigation Act. In ruling on such a case, the court considered that those committees are not "empowered to contest [...] the applicability of a judicial decision that has granted the applicants' petition and established their right to recover the immovable property within the physical limits and site fixed by judicial decision. In not proceeding in this fashion and in touching on the very essence of the law, already established judicially [...], the committee exceeded the limits of its jurisdiction and ignored its function, which is limited by law, in violation of the right of petitioners to be issued with the administrative document establishing their right of ownership of the land." (Decision of the Iaşi court, confirmed by the rejection of the application for remedy by the Iaşi court of appeal, Decision No. 160/1993.)

39. The courts of appeal, which exercise primary jurisdiction over petitions by persons whose rights have been infringed as a result of administrative acts ordered by the departmental Prefects, have found such measures to be unlawful, annulled the decisions and instructed the Prefects to issue new orders consistent with the statutory provisions. Where the Prefects have refused to do so, the Supreme Court has confirmed their obligation to issue new orders respecting the rights of individuals embodied in legislation (Supreme Court, Administrative Litigation Division, Decision No. 292/1994).

40. The same procedure has been followed in cases where, contrary to irrevocable judicial decisions, the administrative authorities, having recognized the right of ownership re-established by the judgement of a court of first instance in civil proceedings, have, instead of assigning the land to the petitioner, decided to assign him shares in a commercial company (Supreme Court, Administrative Litigation Division, Decision No. 482/1994).

Article 3

41. The legislative framework ensuring "the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant" was described in the third periodic report of Romania (paras. 27-30). Bearing in mind the recommendations made by the Committee in its General Comments adopted in April and November 1989 (CCPR/C/21/Rev.1 and Add.1), the present report offers a few examples of judicial measures intended to ensure the exercise by women of their rights in social and family life, on an truly equal footing with men.

42. The courts have sometimes received complaints against decisions to annul work contracts, regarded by the petitioner as intended solely to replace women employees by men. In one such case the court found that the suppression of the petitioner's job was factitious and that its sole aim was to replace her with another employee whose job had been suppressed. In consequence, the court decided that the female employee should be reinstated and all her rights restored (Ploieşti court of appeal, Decision No. 2186/1994).

43. Judicial practice generally considers work done by women in the home, as well as work done for the sole purpose of educating the children, as one of the criteria for establishing the contribution made by each spouse during the marriage, in the event of divorce and separation of their common property (Supreme Court, Civil Division, Decision No. 907/1993).

44. The same principle of equality with respect to rights and obligations is the basis for the establishment of joint and several liability for debts contracted during the marriage with a view to meeting the ordinary needs of family life. Consequently, regardless of whether the creditor has served the writ on the woman or the man, the spouses will be jointly and severally liable for the repayment of debt contracted during the marriage in order to acquire a home (Ploieşti court of appeal, Decision No. 1937/1994).

45. In view of the recommendations made by the Committee on the occasion of its consideration of the third periodic report of Romania (CCPR/C/58/Add.15) concerning the need for the Government to take positive measures to consolidate women's role so as to secure their participation in public life and offer them equal opportunities in matters of employment and remuneration, attention should also be drawn to a few significant events that have taken place in recent years in that connection.

46. As active members of society, women participate in every aspect of social life. According to figures from the 1992 census, the participation rate of women in the labour force was then 41.7 per cent, while between 79 and 83 per cent of women aged between 20 and 35 were economically active. Women's representation in the country's working population (50.8 per cent in 1992) is still lower than that of men compared with their representation in the country's population, but it should be noted that a man's working life is five years longer (the statutory age of employment is from 16 to 54 years of age for women but from 16 to 59 for men).

47. Women make a considerable contribution to certain sectors of the national economy and of social life. For example, in 1993 the majority of persons

employed in the tertiary sector were women (51.9 per cent, compared with 39.9 per cent in 1990 and 37.7 per cent in 1985). Some sectors of economic and social life have become perceptibly female-dominated, such as health (78.9 per cent), finance (75 per cent), teaching (73.2 per cent), commerce (68.5 per cent), agriculture (59 per cent) and the magistracy (57.5 per cent). At the same time it is true to say that, in spite of a legislative framework that provides for equal rights for men and women, the latter's place in society is more vulnerable because of the current economic, social and cultural context. Women are in a position of inferiority in many fields of activity, not only on account of the more substantial contribution they make to family life but also on account of a specific attitude towards them on the part of society as a whole - including some women themselves - which prevents the full exploitation of their potential.

48. That is why, for example, women continue to be under-represented in political life (accounting for 3.7 per cent of Members of Parliament in 1994). They are also more affected by unemployment (in 1994 the unemployment rate was 12.9 per cent for women, compared to 10.9 per cent for men); and their representation in decision-making structures is not proportionate to their overall contribution to the corresponding sectors.

49. Yet women have adapted rapidly to market economy conditions, bringing a considerable contribution to activities in the private sector of the national economy (accounting for 20.2 per cent of the total number of employers, and 19.6 per cent of directors of private companies).

50. In order to promote the advancement of women in decision-making structures, the Government has appointed women Secretaries of State in the Ministries of Justice, Education, and Labour and Social Protection. By its Decision No. 816/1995, it set up a special structure for women's rights within the Ministry of Labour and Social Protection. A woman Secretary of State heads this department, the tasks of which include studying the most appropriate measures for implementing the principle of equal opportunities for women and men. Women currently occupy seven posts of Secretary of State in the ministries and central administrative authorities, 647 posts of mayor and deputy mayor, and 270 senior official posts in public administration.

Article 4

51. During the reference period Romania has not been faced with a public emergency rendering necessary the adoption of exceptional temporary measures to restrict the exercise of certain rights recognized by the Covenant.

Article 5

Paragraph 1

52. No activity has been engaged in and no act has been performed in Romania by any group or person, based on a misinterpretation of the provisions of the Covenant and aimed at the destruction of any of the rights and freedoms recognized therein or at limiting them to a greater extent than is provided for therein.

Paragraph 2

53. No restriction upon or derogation from the fundamental human rights guaranteed by domestic law or by the international conventions to which Romania is a party has been applied on the pretext that such rights are not recognized by the International Covenant on Civil and Political Rights. The examples taken from judicial practice (see paragraphs 18, 29-30 and 37-40 of this report), concerning the guarantee of an effective remedy in matters of the right to property - a right that is not explicitly provided for in the Covenant, but only indirectly, in the form of a prohibition of any discrimination based on property - bear out this affirmation.

Article 6

54. The previous report of Romania presented the constitutional provisions guaranteeing all persons the right to life and prohibiting the death penalty (CCPR/C/58/Add.15, paras. 46-53). Judicial practice bears witness to judges' concern to achieve a correct legal characterization of criminal acts that have resulted in a loss of human life, so as to ensure that the penalty is commensurate with the seriousness of the acts and the evidence concerning the intent of the person who has committed the criminal act.

55. Case law has recorded appeals by accused persons convicted of murder or aggravated murder (offences for which the penalties provided for in the Penal Code are 10 to 20 and 15 to 20 years' imprisonment respectively), requesting the legal characterization of the act to be changed to intentional striking and wounding (an offence for which the Penal Code provides for a shorter sentence of 3 to 10 years' imprisonment, unless the perpetrator had intended to cause the victim's death). Such appeals have been rejected whenever the court has found that there was manifest intent on the part of the perpetrator to cause the victim's death by blows administered with great force and with objects likely to cause death (Iaşi court of appeal, Judgements in Penal Proceedings Nos. 2/1993 and 15/1993).

56. Similar situations have been brought to light by appeals in which the accused, convicted of attempted murder, have requested the characterization of the act committed to be changed to violation of the person. In cases where, after examining the evidence, the courts ascertained that the victims had been struck about the head or chest with an axe and that there had been intent to cause death, although death had in fact not resulted, owing to circumstances independent of the will of the accused (the victim having managed to defend himself), the appeal was rejected and the initial legal characterization maintained (Braşov court of appeal, Judgement in Penal Proceedings No. 6/1994, Iaşi court of appeal, Judgement in Penal Proceedings No. 11/1993).

57. In the period following the publication of a decree-law in December 1989 decriminalizing illicit abortion, judicial practice recorded cases of acquittal on appeal (of persons convicted before the publication of the decree-law), in which no account was taken of the fact that the abortion, performed in back-street conditions, had caused the woman's death. The Supreme Court found that the decriminalization of illicit abortion might justify the acquittal of the accused on that count alone, but not on the count of homicide - albeit unintentional - of the woman, not even the most rudimentary measures having been

taken to prevent infection. Consequently, the Supreme Court changed the legal characterization to one of unintentional homicide, and the accused was sentenced to imprisonment and obliged to pay compensation to the victim's family (Supreme Court, Criminal Division, Decision No. 89/1993).

Article 7

58. In the light of the General Comments adopted by the Committee in April 1989 (CCPR/C/21/Rev.1), the information provided in the previous report of Romania concerning the prohibition against torture and inhuman or degrading treatment requires updating, particularly as regards the following points:

(a) investigation of allegations of ill-treatment by police or prison staff of persons detained or arrested falls within the jurisdiction of the military prosecution services;

(b) persons found guilty of ill-treatment have been suspended from their duties and committed for trial before the military courts;

(c) presumed victims have access to judicial remedies, including the right of appeal regarding the penal aspect of the proceedings, and are also entitled to damages for material and moral injuries sustained;

(d) incommunicado detention is prohibited. Detention is permitted only in places of detention officially established for the implementation of pre-trial detention and the execution of custodial penalties;

(e) the family of the person arrested must be informed of the arrest and has the right to contact the person arrested; the latter also has the right to contact a legal representative (chosen by himself or officially appointed) and to consult a doctor if he is unwell;

(f) all places of detention are provided with registers, which may be consulted by members of the family and other persons;

(g) the prohibition against torture and other inhuman or degrading treatment or punishment, as provided for in the Romanian Constitution (article 22 (2)) and the Code of Criminal Procedure (article 5 (1)), also covers persons undergoing criminal prosecution and trial, persons sentenced to imprisonment serving their sentence in a prison, minors interned in re-education centres, and persons compulsorily detained in medical institutions.

59. There are no express provisions invalidating an acknowledgement of the act or other testimony obtained in violation of the aforementioned statutory provisions and of article 7 of the Covenant. In the event that the accused or the witness retracts statements made during the criminal proceedings and affirms that they were obtained under duress or by threats, judicial practice reveals that the initial statements are used only if, corroborating other evidence taken during the court investigation, they provide indications of the way in which the act which is the subject of the trial was committed.

60. The questions put by the Committee during its consideration of the third periodic report of Romania concerning the application of article 7 of the Covenant also call for a few clarifications:

(a) with regard to the victims of the demonstrations that took place in front of the government buildings in September 1991 (when special ammunition available to the Civil Guard and Security Service was used), the case brought against two officers of the Service by the Military Prosecution Service is currently being tried. One of the two officers is accused of homicide, and the other of failing to report the offence;

(b) on 4 June 1993, in Case No. 1472/P of the Bucharest Military Prosecution Service, a police officer and two non-commissioned police officers were sent for trial and placed in pre-trial detention on a charge of committing acts of torture. In 1994, 47 police officers and non-commissioned police officers were brought before the courts for misconduct and engaging in irregular interrogation procedures.

(c) during 1995 the military courts passed prison sentences on eight former policemen and police officers found guilty of misconduct towards persons they had arrested in the course of their duties. Twenty-six other policemen and police officers accused of engaging in irregular interrogation procedures and ill-treating persons detained or arrested are currently undergoing trial.

61. The present information also concerns the question raised by the Committee after its consideration of the third periodic report of Romania, concerning the discrepancy between the number of complaints of police abuses and the number of cases investigated and tried. This discrepancy, which was quite marked in the years 1989 to 1992, was due to the length of the criminal proceedings, which were very often protracted as a result of the setting aside by the Procurator-General of decisions not to send cases for trial taken by the subordinate military prosecution services.

62. With regard to the recommendation by the Committee that there should be greater monitoring of the police and that education and training programmes for the police should be implemented, it should be mentioned that between 1993 and 1995 the Romanian Committee for Human Rights and Humanitarian Law, a body set up within the Ministry of the Interior's Inspectorate-General of Police, organized a number of activities to enable police personnel to become more familiar with the system for protection of human rights. These activities were intended to give police officers a clear picture of the main international and domestic human rights norms, and, in particular, of the provisions contained in the Universal Declaration of Human Rights, the European Convention on Human Rights and the International Covenant on Civil and Political Rights. With the same aim in mind, the Inspectorate-General of Police pursued training activities in collaboration with the various non-governmental organizations (NGOs) active in the field of human rights protection, organizing seminars and round-table conferences in various towns in Romania, which were attended by police from all units.

63. Similar activities also took place in the context of the programme of advisory services and technical cooperation set up by the Romanian Government and the Centre for Human Rights for the period 1991-1994. Training courses on

such topics as "The Administration of Criminal Justice", "Human Rights in the Administration of Justice" and "Human Rights and State Organs" were held between 1992 and 1994, and participants included international experts, members of the national police force, representatives of Romanian prison and military establishments and education officers from the police schools, the Police Academy and the Military Academy.

64. In criminal matters, the case law of certain courts of general jurisdiction is also relevant to application of the provisions of article 7 of the Covenant. For instance, in proceedings brought for the summary offence of insulting an official, in which two policemen brought criminal indemnification proceedings, the court of first instance decided to acquit the accused, on the grounds that the policemen had exceeded their powers, thereby provoking the accused's violent reaction. The decision of the court exercising primary jurisdiction was upheld by the courts that heard the appeal and the application for remedy brought by the Prosecution Service (Constanța court of appeal, Judgement in Penal Proceedings No. 24/1994).

65. The efforts being made to apply the provisions of article 7 of the Covenant and of national legislation will be continued until such time as all violations reported are seriously investigated as a matter of course, the acts are accorded a legal characterization commensurate with their gravity, and victims receive appropriate compensation.

Article 8

66. The constitutional provisions prohibiting forced or compulsory labour were described in the third periodic report of Romania (CCPR/C/58/Add.15). Taking those provisions as its starting point, Romania is currently in the process of ratifying International Labour Organization (ILO) Convention No. 105, 1957, concerning the Abolition of Forced Labour, the only basic ILO Convention it has not yet ratified.

67. With regard to application of the provisions of article 8 of the Covenant, the only relevant aspect of judicial practice to be noted concerns the situation referred to in paragraph 3 (c) of that article. The courts have decided that, given that military service cannot be regarded as forced or compulsory labour, no one may be obliged to perform military service before the minimum age of 20 established in article 52 of the Constitution. In one such situation, the military court and military court of appeal having failed to notice that at the time he was called up for military service the accused was only 19 years old, and having sentenced him to a custodial penalty for refusing call-up - an offence under the Penal Code - the Supreme Court quashed the initial decisions and acquitted the accused (Supreme Court, Military Division, Decision No. 14/1994).

Article 9

Paragraph 1

68. With regard to the provision of article 9, paragraph 1, of the Covenant, whereby "no one shall be deprived of his liberty except on such grounds and in

accordance with such procedure as are established by law", mention should be made of the narrow interpretation applied in recent years by the judicial bodies - especially the courts of appeal - to the provisions of domestic law relating to the conditions determining pre-trial detention or its prolongation.

69. In the interests of a clear and logical presentation of the facts, a few examples of the reasons cited for judicial decisions may be given:

(a) "Detention may be the consequence of the existence of evidence of guilt, but it cannot constitute a means of facilitating the demonstration of guilt, as was the case in the past, when some criminal prosecution organs had excessive and even improper recourse to detention, sometimes with the purpose of facilitating the gathering of evidence of guilt, a practice that is totally inadmissible. [...] The general rule must be to carry out an investigation and to try the accused while he is still at liberty. [...] Pre-trial detention must not deprive a person of the right to presumption of innocence; there can thus be no doubt that such deprivation of liberty is an exceptional measure." (Braşov court of appeal, Judgement in Penal Proceedings No. 172/1994.)

(b) "As presented in the court's conclusions, the reason cited concerning the need to obtain a graphologist's report cannot justify the prolongation of pre-trial detention." (Constanţa court of appeal, Judgement in Penal Proceedings No. 42/1994.)

(c) "Whether through reflex or routine - a reaction unrelated to the exigencies of the rule of law - arrest and detention warrants generally cite as grounds for the arrest the penalty of more than two years' imprisonment with which the act is punishable and the danger arising from the intrinsic seriousness of the offence. However, as conceived by the Romanian legislature, the danger that the accused's release might pose to public order is not to be confused with the social threat posed by the offence of which he has been accused. In order to assess whether his release or the revocation of the pre-trial detention measure represents a danger to public order, it is essential to examine the personal data relating to the accused." (Braşov court of appeal, Judgement in Penal Proceedings No. 42/1994.)

70. Before the expiry of the period of pre-trial detention decided on by the prosecutor, he may request the judicial body to prolong the detention. "But the prosecutor is not obliged to regard that course of action as the only preventive measure applicable. He may also have recourse to another measure that obliges the person charged or committed for trial not to leave his place of residence." (Constanţa court of appeal, Judgement in Penal Proceedings No. 228/1994.)

Paragraph 2

71. Pre-trial detention of the accused for a period not exceeding five days, or for a period not exceeding one month following his committal for trial, must be substantiated in a detention order issued by the prosecutor.

72. The arrest and detention warrant is issued in two copies, one of which is handed to the accused; it specifies the act that is the subject of the accusation and the characterization of the offence. Where it has been decided to arrest the accused, the warrant also states the specific reasons that render the

arrest necessary, the legal characterization of the act and the penalty fixed by law (Code of Criminal Procedure, arts. 146, 147 and 151).

Paragraph 3

73. The accused may be arrested only after questioning by the prosecutor (or examination by the court, if the decision to arrest him is taken during the trial). In the event that his whereabouts are unknown or that he is abroad or eluding prosecution or trial, his arrest may nevertheless be ordered. The accused will be interrogated immediately after his arrest or after his appearance before the criminal prosecution body (Code of Criminal Procedure, art. 150).

74. In accordance with the amendments made to the Code of Criminal Procedure in 1990 (under Act No. 32), the right to a defence is guaranteed throughout the criminal proceedings (art. 6). Consequently, the prosecutor is obliged to ensure that counsel for the defence is present during interrogation of the person charged or committed for trial and to make mention of the fact on every statement made. If the person arrested does not have a legal representative of his own choosing, counsel will be appointed for him by the prosecutor (art. 171).

75. Application of these mandatory provisions is guaranteed; failure to observe them will render null absolutely statements made by the person arrested without the prior advice of counsel of his choosing or without the appointment and prior advice of assigned counsel. The nullity may not be revoked and may be invoked at any stage of the proceedings, including the appeal stage.

76. In an appeal lodged by the Prosecution Service against the decision to convict the accused to 12 years' imprisonment for homicide, among the reasons that prompted the lodging of the appeal was the nullity of the statement made by the accused before the prosecutor, which did not comply with the legal requirements. That argument was judged to be well-founded, the statement in question being deemed to be null and void. Consequently the court of appeal decided to refer the case back in order for the prosecution proceedings to be completed in compliance with the conditions required by law (Iaşi court of appeal, Judgement in Penal Proceedings No. 13/1994).

77. As detention of persons undergoing prosecution must not be the general rule, but only a measure justifiable in exceptional circumstances, the practice of the courts of appeal is to annul the decisions of lower courts that are too ready to admit requests for prolongation of preventive detention submitted by the prosecutors on the grounds that the accused has committed an offence punishable by more than two years' imprisonment and that his release would represent a threat to public order (art. 148 (b) of the Code of Criminal Procedure).

78. These two conditions are concurrent, and the court is obliged to analyse them attentively and separately. "The idea that, whenever the penalty provided for by law is imprisonment for a period of more than two years, there is always an implicit and actual threat to public order, is fairly widespread. But it is

profoundly mistaken." (Braşov court of appeal, Law Reports and Commentaries, 1995, p. 102).

79. Another important aspect of the courts' concern to secure correct interpretation of the provisions of domestic legislation and of international conventions is the procedure for provisional release, either under court supervision or against a security. It is the responsibility of the prosecutor to deal with the application for provisional release submitted by the accused during the criminal proceedings. In accordance with the Code of Criminal Procedure the application shall be considered as a matter of urgency and a decision taken after the questioning of the accused, who shall be assisted by his lawyer (art. 160^8). Should the prosecutor order the application to be rejected, the accused may lodge a new application with the court exercising primary jurisdiction. That court will take a decision thereon after hearing the accused and counsel's conclusions (arts. 160^9 and 160^8). "Transformation of the obligation to hear the accused into an examination of the accused is an unlawful procedure, the court being seized solely to consider the lawfulness of the order to reject his application for provisional release." (Braşov court of appeal, Judgement in Penal Proceedings No. 2/1993.)

80. Judicial decisions concerning provisional release generally invoke the provisions of the Code of Criminal Procedure, whereby "at any point in the criminal proceedings an arrested accused person may request his provisional release, under court supervision or against a security" (art. 160^1). Some courts have concluded that these provisions, which appear to embody the idea of the right of the person arrested to be provisionally released, must be interpreted in accordance with article 23 (7) of the Constitution, which provides that "a person under pre-trial detention has the right to apply for provisional release, under court supervision or against a security." Consequently, "if the court finds that the conditions expressly laid down in articles 160^2 and 160^4 of the Code of Criminal Procedure are fulfilled, it is obliged to admit the application for provisional release." (Braşov court of appeal, Law Reports and Commentaries, p. 101).

81. Rejection of the application for provisional release under court supervision on the grounds that it "would not be desirable in view of the high degree of social risk attaching to the offence committed" contradicts the specific conditions established by law. "Moreover, desirability - as a legal condition - is a concept that is not embodied in our criminal legislation. Any assessment of desirability opens up the way to arbitrariness, which is totally inadmissible in a State in which the rule of law prevails." (Braşov court of appeal, Judgement in Penal Proceedings No. 89/1995.)

82. According to another decision, "by simply affirming that release of the accused endangers public order, without specifying in what manner it might be jeopardized, the court violated the obligation to give reasons for its decision, set forth in article 23 (4) of the Constitution, under the terms of which, as to the lawfulness of the arrest, the judge is obliged to hand down a judgement setting forth the reasons therefor." The court of appeal also found that the court had not taken into consideration article 20 of the Constitution, whereby "the constitutional provisions concerning the rights and freedoms of citizens shall be interpreted and applied in accordance with the Universal Declaration of Human Rights..."; citing thereafter article 9 of that instrument, which provides

that "no one shall be subjected to arbitrary arrest, detention or exile." Concluding that only an enumeration of reasons based on a meticulous examination of the personal data relating to the accused can eliminate the risk of delivering a hasty and arbitrary judgement, the court of appeal admitted the application for remedy, set aside the court's decision and ordered the release of the accused (Constanţa court of appeal, Judgement in Penal Proceedings No. 23/1993).

83. If, after being provisionally released against security, the accused is tried and either fined, given a suspended custodial sentence or sentenced to perform community service, the conditional aspect of his release ceases to be justified. Thus, concurrently with the pronouncement of sentence, the court is obliged to order the cessation of the state of provisional release and the return of the security (Supreme Court of Justice, Criminal Division, Decision No. 482/1994).

Paragraph 4

84. The right of the person charged and of the person committed for trial to appeal to the court against the pre-trial detention order or order not to leave the area issued by the prosecutor was introduced into the Code of Criminal Procedure (art. 140^1) by Act No. 32/1990. The appeal must be submitted to the court, together with the file, within 24 hours. The detainee must be brought before the court and must be assisted by his lawyer. After hearing the detainee, the court is obliged to rule, on the same day, as to the lawfulness of the measure.

85. Where the court admits the request, ordering the revocation of the pre-trial detention measure, the prosecutor may lodge an appeal under article 141 of the Code of Criminal Procedure, which provides that "the preliminary order pronounced at first instance, ordering the initiation, revocation, substitution or cessation of a pre-trial detention measure, may be the subject of a separate appeal, lodged by the prosecutor or by the accused. The time limit shall be three days from the pronouncement of the judgement, for those present, or from the communication thereof, for those absent."

86. The opposite situation, in which the court has rejected the request and maintained the detention measure, is not mentioned in the enumeration contained in article 141 of the Code of Criminal Procedure. Taking into consideration the strict interpretation applied to these provisions (as an exception to the rule whereby preliminary orders may be disputed only on the merits), applications by the accused are generally rejected as inadmissible. Conflicting decisions have sometimes been reached, as in one case in which there were two accused, where the appeal by the prosecutor against the order revoking the pre-trial detention of one of the accused was declared admissible (under article 141, cited above), whereas the appeal by the other accused, whose request for revocation of the detention measure had been rejected in the same order, was declared inadmissible (Supreme Court of Justice, Criminal Division, Decision No. 921/1995).

87. Recent case law has also recorded separate opinions of some judges who regard as unacceptable any solution that might violate the principle of symmetry of rights between the parties, enabling the prosecutor immediately and

separately to dispute the order to revoke the detention, whereas the accused is obliged to wait for the decision of the court with original jurisdiction before being able to challenge the order rejecting his request for revocation of pre-trial detention.

88. Taking as their starting point the principle of the equivalence of the rights of prosecutor and accused in the exercise of judicial remedies, and bearing in mind the non-discriminatory character of all other statutory provisions in matters of remedies, some judges consider that "a strict interpretation of the law necessitates a rational and systematic interpretation of the text that rules out the placing of excessive emphasis on the grammatical element". Thereafter, it is concluded that in the absence of an express and univocal provision in article 141, the accused may immediately and separately dispute the preliminary order rejecting his request for revocation of the pre-trial detention measure (separate opinion on the occasion of the Decision of the Braşov court of appeal No. 77/1994, which, by a majority decision, rejected the application for remedy by the accused as inadmissible.

Paragraph 5

89. Under article 504 of the Code of Criminal Procedure, the person arrested has a right to compensation from the State for the harm suffered if criminal proceedings against him were subsequently dropped or if he was acquitted because he "had not committed the act of which he stood accused or that act had not been committed". Given that the chapter of the Penal Code relating to compensation contains no reference to the means of establishing the amount of the damages, the Supreme Court of Justice considers that they shall be determined with reference to the principles set forth in the Civil Code. Accordingly, damages awarded for harm suffered would represent "fair and full compensation for the actual loss and for the profit forgone by the person unjustly arrested". In other words, the wage of which the applicant has been deprived during his detention will be adjusted to take account of inflation (Supreme Court of Justice, Civil Division, Decision No. 552/1995).

90. Full compensation for the damage caused to the person unjustly arrested "must cover the material damage, and also the moral damage, albeit with no obligation to observe any proportion between the two forms of damage."

Article 10

Paragraph 1

91. The right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person, recognized by the Covenant, is also guaranteed by the Romanian Code of Criminal Procedure (art. 5^1). In providing for detention and the obligation not to leave the locality as alternative measures, the Code adds that with a view to adopting the most appropriate measure, account must also be taken of "the state of health, age, personal history and other information concerning the person against which it is directed" (art. 136). On the expiry of the period of validity of the warrant, the prosecutor may again choose between two possibilities: either to request the court to prolong the pre-trial detention,

or else to oblige the accused not to leave the locality, for a maximum period of 30 days (art. 145).

92. When at the time of the arrest the person arrested is responsible for a minor, for a person placed under interdiction, or for a person who, because of age, illness or other circumstances is in need of assistance, the judicial organ that has ordered the arrest is obliged to draw the situation to the attention of the body competent to take the necessary protection measures (art. 161).

93. If the person sentenced to a custodial penalty suffers from an illness making it impossible for him to serve the sentence, if a female convicted is pregnant or has a child under one year old or if, because of special circumstances, execution of the sentence would have serious consequences for the person convicted or for his or her family, the court may decide to defer it.

94. For reasons of illness, also relating to the convicted person's age, the court may also order suspension of execution of the sentence. Such cases can be found fairly frequently in judicial practice. For example, considering that neither the court exercising primary jurisdiction nor the court of appeal had taken the necessary steps to determine whether the illness from which the convicted person suffered could be treated in the prison medical system, or whether it required suspension of execution of the sentence and hospitalization in a specialized establishment, the Supreme Court admitted the application for remedy and sent the case back to the court exercising primary jurisdiction for retrial following a further medical examination (Supreme Court of Justice, Criminal Division, Decision No. 968/1995).

Paragraph 2

95. The separation of unconvicted and convicted persons calls for fairly large specialized institutions of a kind which it has not yet been possible to provide in Romania. However, overcrowding in prisons and the practical problems of ensuring speedy trial of unconvicted persons have had a positive influence on judicial practice, by obliging judges to examine carefully every request for prolongation of pre-trial detention. A reduction in the duration of detention and the continuation of criminal proceedings against the accused after his release are all the more necessary in that it is impossible to ensure compliance with the minimum permitted space-to-detainee ratio in all prisons.

96. It should be explained that the 31,000 prison places in Romania are occupied by 45,000 detainees, with an occupancy rate of about 150 per cent in 1995. Jilava prison, for example, has 1,500 places, with about 2,000 bunk beds, usually occupied by 3,400 detainees.

97. The separation of accused juvenile persons from adults and their speedy adjudication, in accordance with the provisions of paragraph 2 (b) of article 10, are intended to reduce the undesirable effects of deprivation of liberty on young people, whose characters are still in the process of being formed. The need to individualize and adapt penal proceedings against minors to take specific account of their age is borne in mind by the courts in general and by the courts of appeal in particular. The theory that harsher measures would be more educationally efficacious than leniency is rejected in favour of

prosecution and trial of minors while still at liberty, followed by confinement in re-education centres or suspended custodial sentences, as appropriate (Braşov court of appeal, Law Reports and Commentaries, 1995, p. 70).

98. The case of two 16-year-old minors held in pre-trial detention for more than a year was considered by the court of appeal as "a profoundly negative reflection on judicial activity, [a case] totally exceptional, demanding a rational and equitable solution". The court went on to find that confinement in a re-education centre until the age of majority (that is, for approximately one further year) was no longer justified, being inequitable in view of the length of time the two minors had already spent in detention. Consequently, the court deducted the duration of the detention from that of their potential confinement in a re-education centre, ordering their immediate release (Braşov court of appeal, Judgement in Penal Proceedings No. 99/1995).

Paragraph 3

99. The prisons system, which is essentially intended to re-educate convicted persons and rehabilitate them socially after they have served their sentence, has been considerably improved through the establishment and observance of a clear methodology for the organization of detainees' lives and activities. The international standards relating to the prisons system have been published in brochures and distributed in all places of detention; they are discussed with detainees, particularly with recent arrivals, to enable them to adapt better to the rigours of prison detention.

100. In order to provide better guidance to staff, each year the Directorate-General of Prisons attached to the Ministry of Justice draws up a thematic list of activities designed to make detainees aware of the seriousness of the acts they have committed and of the need to improve their conduct. The period of detention is used to raise detainees' levels of education, vocational qualifications and general knowledge - including a knowledge of legislation, national history, popular culture, and of Romanian and foreign nationals who have contributed to the development of world culture; and also to provide moral and religious education, having regard to their respective beliefs.

101. In some prisons the necessary conditions have been created to enable artistically gifted detainees to produce paintings, sculpture and craft work; they put on exhibitions and perform plays, sometimes before an invited family audience, or even - via television - one made up of members of the public. Participation by detainees in the preparation of periodicals, newspapers and radio broadcasts, and use of prison libraries (expanded to 20,000 volumes in 1995), have a positive effect, developing detainees' awareness of their abilities. However, the availability of audio-visual resources in prisons continues to be inadequate. Even library stocks are low, as the Communist regime made no attempt to invest in this area during its last 25 years in power. Sports grounds have been constructed in most prisons; where there are none, detainees perform physical training exercises in the exercise yards.

102. Within the prisons system, rewards for good conduct are increasingly preferred to disciplinary sanctions. Between 8,000 and 9,000 disciplinary sanctions are imposed annually, compared to between 50,000 and 60,000 rewards, such as visits by the family on traditional holidays or in order to deal with

personal problems, entitlement to receive additional visits and correspondence, etc.

103. In 1994, the committees empowered to make recommendations for conditional release looked into the situation of more than 35,000 detainees and recommended the release of some 26,000 convicted persons; in 97.2 per cent of cases the recommendations were approved by the courts.

104. As for procedures for complaints, detainees may submit oral reports or written complaints setting out personal claims. Complaints addressed to international organizations are transmitted via the Directorate-General of Prisons. In 1995 there were 321 protests involving hunger strikes - 258 of them relating to the length of the sentence, 30 to rejection of requests for transfer to another prison, 10 to rejection of an application for conditional release, 17 for reasons relating to the detention regime, and 6 for medical reasons.

105. The Directorate-General of Prisons' medical network comprises a hospital with 10 specialized sections at Jilava prison near Bucharest; two hospital units at Poarta Albă and Colibaşi prisons; 34 medical consulting rooms; 30 stomatology clinics; 12 technical dental laboratories; and a service to coordinate periodic prophylactic medical monitoring and provide health education.

Article 11

106. Inability to fulfil a contractual obligation does not constitute grounds for imprisonment in Romania.

Article 12

Paragraph 1

107. The right of persons lawfully within the territory of Romania to liberty of movement and freedom to choose their residence is guaranteed by article 25 of the 1991 Constitution. However, the pre-1989 legislation contained a provision under which any tenant absenting himself from his domicile for more than six months lost the right to use his home through non-utilization. The judicial bodies empowered to deliver decisions on eviction orders carried out pursuant to that provision rejected the applications, considering that by virtue of the constitutional right to liberty of movement and of the right freely to establish one's domicile or residence in any locality in Romania, the tenant retains his right to the home throughout th entire period of the tenancy agreement (Iaşi court of appeal, Civil Decision No. 35/1993).

Paragraph 2

108. The statutory framework regulating the right of any person to leave his own country was described in the previous periodic report of Romania (CCPR/C/58/Add.15). The measures taken after 1989 to guarantee Romanian citizens effective enjoyment of the right to liberty of movement led to a constant and very considerable flow of citizens travelling abroad as tourists, on business, or even to establish their domicile there.

109. Between 1990 and 1994, 7,685,544 tourist passports were issued to Romanian citizens: 3,635,333 in 1990; 2,021,706 in 1991; 851,196 in 1992; 475,988 in 1993; and 301,321 in 1994. In 1995, after the installation of the computerized system, 973,026 new passports were issued to Romanian citizens. The statistical data provided by the border control services are also revealing: 10,905,000 departures abroad by Romanian citizens in 1992; 10,757,000 in 1993; 10,105,000 in 1994; and 11,566,897 in 1995. Generally speaking, in recent years there has also been a perceptible fall in the number of Romanian citizens taking steps to establish their domicile abroad. In 1990, 115,550 passports were issued for that purpose; in 1991, 28,550; in 1992, 14,270; in 1993, 9,421; in 1994, 9,572; and in 1995, 23,050. The same general trend is reflected in the figures for the number of persons who have actually left the country to establish their domicile elsewhere in recent years: 96,929 in 1990; 44,160 in 1991; 31,152 in 1992; 18,446 in 1993; 17,146 in 1994; and 10,452 in 1995.

110. As regards exercise of the right to possess housing by Romanian citizens who have gone abroad, the principle set forth in paragraph 107 is applied. Even if the duration of establishment abroad is longer than six months (the period provided for in the regulations still in force in housing matters), as a Romanian citizen the tenant retains the right to return to his country, thereby retaining his right of tenancy (Braşov court of appeal, Civil Decision No. 406/1994).

Paragraph 3

111. Measures going beyond the statutory framework concerning permissible restrictions on the right to liberty of movement are sanctioned by the judicial review bodies - for example, by revocation of the order prohibiting a person from remaining in a specific locality, when that measure does not reflect a narrow interpretation of the provisions of the law. The Penal Code regulates local expulsion orders as a social protection measure that may be ordered on sentencing when "the person in question had previously been sentenced for other offences to a custodial penalty of at least one year, and if the court considers that his presence in the locality where the offence was committed, or in other localities, constitutes a serious threat to society" (art. 116).

112. When ordering the social protection measure, the court must take account of situations that may render its implementation impossible; for instance, when no sentence is passed in respect of an act brought to trial (art. 111 of the Penal Code). Omitting to apply that provision, the court exercising primary jurisdiction, after ordering the criminal proceedings to be halted following the amnesty declared in respect of the offence of fraud for which the accused had been committed for trial, invoked article 116 of the Penal Code, prohibiting an accused person from remaining in the capital for the next five years. The court of appeal found that provision had been applied in violation of the statutory framework concerning the imposition of certain restrictions on the principle of liberty of movement and, consequently, annulled the local expulsion order (Supreme Court of Justice, Criminal Division, Decision No. 1678/1990).

Paragraph 4

113. As regards the right of persons to enter their own country, it should be mentioned that between the democratic transformations of 1989 and the end of

1995, 14,356 persons regained their Romanian citizenship. At the same time, 21,167 Romanian citizens who had left the country returned to it.

Article 13

114. The provision contained in article 19 (3) of the 1991 Constitution, whereby expulsion may be decided on solely by the judicial body, confers on the person concerned the possibility of submitting the arguments against his expulsion, as provided for in article 13 of the Covenant. Regulated by the Penal Code as a social protection measure, expulsion may be ordered only against an alien or stateless person who has committed an offence, the aim of the measure being to eliminate the danger he represents and to prevent other offences from being committed in the territory of Romania (arts. 111 and 112). The person concerned may avail himself of the legal remedies in order to appeal against the judicial decision to expel him.

115. Article 117 of the Penal Code was supplemented following Romania's accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, by Act No. 20/1990, which provides that the citizens of other States or stateless persons "may not be expelled if there are serious reasons for believing that they would be in danger of being tortured in the State to which they would be sent".

Article 14

Paragraph 1

116. The third report (CCPR/C/58/Add.15), submitted in 1992, gave extensive details of the constitutional provisions and legislative guarantees introduced after 1989 to ensure equality before the courts and tribunals and the exercise of the right to a fair and public hearing by a competent, independent and impartial tribunal.

117. The Organization of Justice Act (Act No. 92/1992) was adopted after the preparation of the third periodic report. Its provisions are based on the fundamental principle of the functioning of the powers in a democratic society. "The Judicial Power shall be separate from the other Powers of the State, having its own attributions which shall be exercised by the judicial bodies and the Prosecutor's Department, in accordance with the principles and provisions laid down in the Constitution and other domestic legislation" (art. 1). The judicial system consists of the courts of first instance, the departmental courts, the courts of appeal and the Supreme Court of Justice (art. 10), together with the military courts, which are organized under a special act (Act No. 56/1993).

118. The requirements formulated in article 14, paragraph 1, of the Covenant are to be found in the Organization of Justice Act (Act No. 92/1992), the provisions of which will be cited in the order in which they appear in the Covenant, the first being that "all persons shall be equal before the courts and tribunals". In this regard, the Act provides that "Justice shall be accomplished in an equal manner for all, without any distinction on account of race, nationality, ethnic origin, language, religion, sex, opinion, political allegiance, wealth or social background." (art. 4).

119. Free access to justice and the right of any person to apply to a court that will determine his rights and obligations in a suit at law are regulated by the following provisions: "The judicial bodies shall accomplish justice with a view to defending and realizing the fundamental rights and freedoms of citizens, as well as the other legitimate rights and interests brought before their jurisdiction. The courts shall hear all proceedings concerning civil, commercial, labour, family, administrative and criminal judicial relations and any other matter jurisdiction over which is not otherwise established by law." (art. 2).

120. The right of any person to have his case heard by a competent tribunal established by law is at the basis of the criteria for jurisdiction regulated by Act No. 92/1992. Ordinary jurisdiction, as the body exercising primary jurisdiction, lies with the judges, except in the case of proceedings primary jurisdiction over which is expressly specified as falling to the departmental courts (art. 25) or to the courts of appeal (art. 28).

121. The categories of proceedings and petitions over which each of these courts exercises primary jurisdiction are enumerated in detail in the Code of Civil Procedure (arts. 1-3) and in the Code of Criminal Procedure (arts. 25, 27 and 28^1). The Code of Criminal Procedure also regulates the material jurisdiction of the military courts and of the Military Court of Appeal (arts. 26, 28 and 28^2).

122. The territorial jurisdiction established by the Organization of Justice Act (No. 92/1992) is based on the administrative division of the country into 40 departments, together with the capital (the Municipality of Bucharest). In each department there are between three and five courts of first instance; and in the capital, six courts of first instance, one for each sector. The departmental courts, of which there are 41, operate in the chief towns of each department and in the national capital. The area of jurisdiction of each of the 15 courts of appeal covers between two and four departmental courts, except for the Bucharest court of appeal, which covers five.

123. The Organization of Justice Act embodies the principle of a public and oral hearing (arts. 5, 6 and 9) and the right of the parties to be represented or assisted by defence counsel (art. 7). One of the requests made by the Human Rights Committee at its consideration of the previous report of Romania concerned clarification of the circumstances which might justify the holding of the trial in camera in order to protect "certain State interests". It is for the court to assess whether the Prosecution Service's request is justified, on the basis of the arguments invoked to support the affirmation that a public trial "might damage the interests of the State" (Code of Criminal Procedure, art. 290, para. 2).

124. "The announcement that the session shall be held in secrecy is made in public session, after the parties present, as well as the prosecutor participating in the trial, have been heard." "While the session is held in camera, only the parties to the proceedings, their representatives, defence counsel and the other persons summoned to appear by the court in the interests of the case shall be admitted into the courtroom." (Code of Criminal Procedure, art. 290, paras. 3 and 4). Such a case is currently being heard by the Bucharest court of appeal: the accused (a former State Secretary in the Ministry of

Industry) is charged with having committed treason by passing secret State documents concerning Romania's natural resources of gold, silver, copper, zinc and lead to citizens of other countries in return for payment. Given that a public discussion of the problems relating to the content of the various documents would have led to a violation of the obligation to respect the secrecy of the data in question, the court of appeal accepted the Procurator-General's application, ordering the trial to take place in camera. The Prosecution Service's request was also supported by the accused.

125. The right of individuals to a fair hearing of their case by a competent and impartial tribunal is guaranteed by the following provisions of the Organization of Justice Act:

> "Judges shall be independent and subject solely to the law" (art. 3).
>
> "Judges and prosecutors, other than trainees, shall be appointed by decree of the President of Romania on a proposal by the Higher Council of the Magistracy" (art. 51).
>
> "The Higher Council of the Magistracy shall consist of 15 members elected for a period of four years by the Chamber of Deputies and the Senate in joint session" (art. 71).
>
> "Of the 15 members of the Higher Council of the Magistracy, 10 shall be judges (four judges of the Supreme Court of Justice and six judges of the courts of appeal), and five shall be prosecutors" (art. 72).

126. The Higher Council of the Magistracy has the following functions:

"(a) It proposes to the President of Romania appointments to the posts of judge and prosecutor, other than trainees;

(b) it decides on the promotion, transfer and suspension of judges, and on the termination of their duties;

(c) it confirms examinations of magistrates' capacity;

(d) it performs the role of a disciplinary council for judges;

(e) it delivers opinions, at the request of the Ministry of Justice, on questions relating to the administration of justice" (art. 73).

127. The general terms for appointments to the office of judge are set forth in article 50 of the Act; there are also special conditions for each category of court: courts of first instance (art. 65), departmental courts, and courts of appeal (arts. 66 and 67). Conditions for the appointment of judges to the Supreme Court of Justice are regulated by the Supreme Court Act (Act No. 56/1993).

128. The Constitution provides for the irremovability of judges appointed by the President of Romania. The specific conditions to be fulfilled by judges in

order to acquire the status of irremovability are set forth in the Organization of Justice Act:

> "Judges shall be irremovable from the moment of their appointment by the President of Romania.
>
> Judges of the departmental courts and courts of first instance shall be appointed within two years of the publication of this Act..." (art. 129).

129. The Supreme Court Act provides that judges of the Supreme Court of Justice, who under the terms of the Constitution are appointed for a period of six years and may be reappointed, shall be "dignitaries of the State and irremovable during the period of their mandate" (art. 17). The Act also provides that they may not be prosecuted for a criminal or minor offence or committed for trial without the authorization of the President of Romania (art. 59). The power to authorize the prosecution of assistant judges at the Supreme Court of Justice for a criminal or minor offence or their committal for trial lies with the President of the Court (art. 60).

130. With regard to the request by the Human Rights Committee concerning the irremovability of judges in Romania, it should be stressed that all judges of the courts of appeal and most judges of the departmental courts are irremovable. As for judges of the courts of first instance, the Higher Council of the Magistracy has considered it necessary to defer proposals for nominations for irremovability because of the particular circumstances in which the magistracy in Romania presently finds itself. The specific reason is that judges in the courts of first instance are generally very young and inexperienced; furthermore, a large number of the posts (669 out of a total of 2,392) are vacant. It should also be mentioned that there are few applications for the post of judge, the trend being for judges to leave the magistracy in order to practise as lawyers, rather than for lawyers to become judges. The main reasons for this are the disparity between lawyers' fees and judges' salaries and the large number of cases pending with which the judges have to deal on taking up vacant posts.

131. Throughout the years 1993-1995 about 30 per cent of judges' posts were vacant, because, although several hundred law faculty graduates were appointed trainee judges (417 of the 1,723 posts of judge in the courts of first instance are currently occupied by trainees), the disparity persisted as a result of the establishment of new courts of first instance. In December 1995 there were 1,045 vacant posts of judge in Romania (669 in the courts of first instance, 241 in the departmental courts, and 135 in the courts of appeal), as compared to 2,666 occupied posts (1,723 in the courts of first instance, 697 in the departmental courts, and 246 in the courts of appeal).

132. The postponement of the time limit for granting judges irremovability has recently had unforeseen consequences, a number of judges having been challenged by the parties to the proceedings and their lawyers because of the lack of sufficient guarantees of independence and impartiality in the absence of irremovability. The transitional provisions of the Organization of Justice Act, which provide that "from the date of publication of the Act and until irremovability is obtained, the appointment, transfer, promotion, suspension and dismissal of judges shall be within the competence of the Minister of Justice"

(art. 130), have been invoked. But bearing in mind that "magistrates may be promoted and transferred only with their consent" (art. 78), the only problem still to be resolved would appear to be that of suspensions and dismissals on disciplinary grounds. In this regard, the provisions of Act No. 92/1992 may offer a solution, for, as can be seen from a perusal of articles 73, 96, 98 and 101, the Act makes no specific mention of irremovable judges.

133. The procedure established by the Act provides that "disciplinary action, in the event of misconduct by a judge, other than judges and assistant judges at the Supreme Court of Justice, shall be exercised by the Minister of Justice" (art. 96). The Minister of Justice refers the matter to the Higher Council of the Magistracy, which, when functioning as a disciplinary council, is chaired by the President of the Supreme Court of Justice (art. 93 (5)). The Higher Council of the Magistracy delivers a decision, citing the reasons, which is then communicated to the parties (art. 98). The judge accused may contest the sanctions applied by the Higher Council of the Magistracy before the Supreme Court of Justice, which will hear the case sitting as a panel of seven judges. The decision is final (art. 101).

134. The Human Rights Committee also requested additional information on conditions governing the removal of judges. Article 76 of Act No. 92/1992 includes among the circumstances justifying the release of the judge from his duties: retirement; abolition or change of location of the judicial body accompanied by refusal by the judge to accept the new post; dismissal of the magistrate on disciplinary grounds or on grounds of manifest lack of professional capacity or mental illness; and the final conviction of the judge for committing a criminal offence. When criminal proceedings have been brought against a judge, he will be suspended from his duties until the final judgement is pronounced. If the judge is found innocent, the suspension ceases, his rights are restored, and he is paid the financial benefits of which he was deprived during the suspension (art. 76 (2) and (3)).

135. The existence of mental illness may be established only by a committee of three medical experts. The Minister of Justice has authority to suspend the judge in question. The suspension ceases if the Higher Council of the Magistracy has not decided within one month to release the judge from his duties (art. 80 (1)). Where the judge shows manifest personal incapacity in the course of his duties, his dismissal may be ordered only by the Higher Council of the Magistracy, to which the matter has previously been referred by the Minister of Justice (art. 80 (2)).

136. Judges may challenge decisions to dismiss them pronounced in the situations covered by subparagraphs 1 and 2 of article 80 in the Supreme Court of Justice, which will rule on the matter sitting as a panel of seven judges (art. 80 (3)).

137. Among the guarantees of independence and impartiality conferred on judges, mention should also be made of the right of the judge to request, and the obligation of the Ministry of the Interior to provide him with, protection in cases where his own and his family's lives, physical integrity or property are at risk (article 75 of the Organization of Justice Act and article 59 of the Supreme Court Act).

138. With regard to the concern expressed by the Committee following its consideration of the previous periodic report of Romania, with regard to "the continuing powers of the Ministry of Justice over judicial decisions", this concern was presumably prompted by the criticism levelled at article 19 of the Organization of Justice Act. That criticism is only partially justified, given that article 19 provides that control - by the Ministry's inspectors-general, by appeal court judges with powers of inspection, or by delegate-judges - of the activities of judges of the courts of first instance, departmental courts and courts of appeal, "shall be exercised through a procedure aimed at verification of their work, the manner in which working relations with citizens and lawyers are conducted, as well as at evaluation of activity, training and professional aptitudes."

139. Following recommendations by the international organizations of which Romania is a member and with the assistance of Council of Europe experts, the text was modified with a view to its amendment. The draft law was adopted by the Government and is now before Parliament for debate and adoption. In the draft, article 19 of the Organization of Justice Act has been reworded as follows:

> "The Minister of Justice and the Higher Council of the Magistracy shall ensure respect for the independence of justice.
>
> The Minister of Justice shall be responsible for the smooth running of justice as a public service. To that end, the Minister shall be apprised, by inspectors-general of the Ministry of Justice ranking as magistrates, by judges of the courts of appeal assigned to the Ministry as inspectors-general, and by judge-inspectors of the courts of appeal, of any facts liable to compromise the quality of work or the application of laws and regulations in the appeal court districts.
>
> The Minister of Justice shall refer to the Higher Council of the Magistracy acts committed by magistrates that fall within the Council's jurisdiction.
>
> The verifications shall in no case lead to interference in the functioning of proceedings in progress or to the reconsideration of cases already tried. Exercise of the powers conferred by law on the Minister of Justice with regard to judicial remedies shall not be deemed to constitute interference.
>
> The presidents and vice-presidents of the courts shall have the right to carry out verifications of the quality of work, and of compliance with the laws and regulations in the services attached to the courts they direct and in the courts within their judicial districts.
>
> The presidents of the courts of appeal shall also exercise that right through the judges with powers of inspection."

140. While not very extensive, the case law regarding application of the principles set forth in article 14, paragraph 1, of the Covenant nonetheless permits a few examples to be given: "[...] Romanian legislation [...gives] the judge [...] the power to assess independently the case of each accused person, and to order, whenever it is so permitted by law, execution of the sentence by

community service or its conditional suspension. For example, because the accused had driven his car while drunk, his licence was suspended by the police; however, in view of the personal data relating to the accused, his lack of a criminal record, his previous good conduct, his family circumstances, etc., the judges considered that the aim of the custodial sentence may also be achieved by a suspended sentence" (Braşov court of appeal, Judgement in Penal Proceedings No. 216/1994).

141. Also significant are the opinions expressed in the commentaries periodically published on the practice of the courts of appeal. "With a view to individualizing the penalty, the magistrate must be aware of his full independence, based on responsibility and professional competence. We feel it is worth stressing this aspect of the matter, given the perceptible pressure that currently exists to deal more severely with criminals in general - pressure exerted both by the media and by a legislature strongly influenced by the media and bent on increasing the penalties provided for certain offences." (Braşov court of appeal, Law Reports and Commentaries, 1995.)

142. As regards the exception concerning the ineligibility of a judge to try a case on the grounds that he had already tried another case concerning the same accused person, the court of appeal found in its decision that the situation in question was such as to affect the impartiality of the judgement. "The judge presiding over the court exercising primary jurisdiction expressed his opinion as to the guilt of the accused in that case, on the occasion of the trial of the same accused person for a related offence. Consequently, he became ineligible to try the case pursuant to article 47 of the Code of Criminal Procedure. The decision pronounced is annulled and quashed and the case sent for retrial before the same court with a different composition." (Constanţa court of appeal, Decision No. 33/1993.)

143. Article 260 of the Code of Civil Procedure provides for the possibility of deferring the pronouncement of a decision when the court is unable to pronounce immediately. The decision must be pronounced publicly, by the same judges who participated in the previous hearings. If the decision pronouncement of which has been deferred is pronounced and signed by judges other than those who discussed the substance of the case, it is unlawful. A decision pronounced by a court of appeal that has overlooked the unlawfulness of the initial decision is likewise null. (Supreme Court of Justice, Civil Division, Decision No. 745/1994).

Paragraph 2

144. There are no new statutory regulations affecting the application of the provisions of paragraph 2 of article 14. (This is also true as regards the application of the provisions of paragraphs 3, 4 and 6 of article 14.) The legislative framework regulating this area was described in the third periodic report (CCPR/C/58/Add.15). The present report will therefore confine itself to offering a few comments concerning judicial practice.

145. A decision whereby the court exercising primary jurisdiction has endorsed the presentation of the facts given in the submissions and convicted the accused without due grounds, thereby infringing the presumption of innocence to which he

is entitled until proved guilty, is unlawful. "Certainty of the accused's guilt must be clearly and unambiguously founded on the evidence. Yet, in the example cited, the court of first instance took account only of the confused and uncertain statements made by the injured party, without also taking account of the statements made by the accused to the prosecutor and the court. The judicial review body proceeded in the same manner when it delivered a decision on the application for remedy without analysing all the items of evidence. Consequently, following the application, both decisions were quashed." (Constanţa court of appeal, Judgement in Penal Proceedings No. 386/1994.)

146. Pre-trial detention - another commentary emphasizes - "cannot deprive the person in question of the benefit of presumption of innocence". That presumption must be respected by the judge when he is required to deliver a decision on the complaint lodged by the person charged or committed for trial against the pre-trial detention measure, and he must confine himself exclusively to the conditions provided by law, without making any assessment of the guilt of the accused, concerning which he will pronounce only when the case is decided on the merits. Likewise, when he rules on a request for extension of pre-trial detention, the judge must pronounce a "well-founded" decision, taking account of the danger that the release of the person arrested and the continuation of the criminal prosecution and trial while he is at large might pose to the public, with strict recognition of "the presumption of innocence and the exceptional nature of the pre-trial detention measure" (Braşov court of appeal, Law Reports and Commentaries, 1995).

Paragraph 3(a)

147. The provisions of domestic legislation requiring that the person arrested be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him are complied with in Romania. Judicial practice contains no reference to appeals and applications for remedy requesting the annulment of a decision considered unlawful or ill-founded on the grounds that the accused has not been informed, in a language he understands, of the reasons for his arrest.

Paragraph 3(b)

148. Under article 6 of the Code of Criminal Procedure the right to a defence is guaranteed for the person charged or committed for trial from the outset of the criminal proceedings. The judicial organs are obliged to ensure the presence of the lawyer chosen or officially assigned from the moment of the interrogation of the accused at the time of his pre-trial arrest, as well as the possibility for the person arrested to communicate with his lawyer and to have adequate time for the preparation of his defence.

149. "Interrogation of the accused at the time of his arrest without his being assisted by a lawyer constitutes grounds for absolute nullity, even if subsequently the court assigned him a lawyer who assisted him at the time of the submissions by the prosecution in the criminal proceedings. Consequently, the court to which the submissions were addressed should, instead of proceeding with the trial, refer the case back to the prosecutor with a view to re-initiating criminal proceedings in compliance with the statutory provisions relating to

guarantees of the right to a defence." (Supreme Court of Justice, Criminal Division, Decision No. 394/1993.)

Paragraph 3(c)

150. The first condition that must be fulfilled in order to secure the right of everyone to be tried without undue delay is continuity of the prosecution process and accomplishment by the prosecutor of all the necessary steps to gather the items of evidence, with a view to establishing the file and formulating the submissions. The only possibility of jurisdictional supervision whereby the judge can eliminate undue delay in this first stage of the criminal proceedings relates to the application of the statutory provisions concerning the extension of pre-trial detention. After the first detention measure decided on by the prosecutor has been imposed, for a period of 30 days, only the court may decide to extend it, at the request of the prosecutor and only for periods each of which may not exceed 30 days. In order properly to assess the justification for reiterated requests by the prosecutor for the extension of the detention, the judge must take account of the minimum conditions provided for by law, but also of the complexity of the criminal proceedings, of any adverse effects of the acts committed by the accused on the activity of the economic entity, etc. (Constanţa court of appeal, Decisions Nos. 183/1994 and 216/1994.)

151. If, after repeated extensions, the prosecutor should request a further 30-day extension, and if at that stage the court considers that a further 15 days would provide sufficient time in which to complete the criminal proceedings, a further request for extension of the detention after the expiry of the 15-day period is not permissible. The prosecutor is deemed to have had the opportunity to appeal against the preliminary order whereby the court granted his application for an extension, but granted it for a period of 15 days only. The decision by the prosecutor not to appeal against that decision is interpreted as an acceptance of the reasons cited in the preliminary order declaring a 15-day extension of pre-trial detention to be sufficient. Consequently, the court rejected the further request for extension submitted by the prosecutor on the expiry of the 15-day period. His appeal against the court's preliminary order was also rejected (Court of Appeal, Judgement in Penal Proceedings No. 239/1994).

Paragraph 3(d)

152. Judicial practice, particularly that of the courts of appeal, bears witness to the concern to monitor modalities for application of the provisions of the Covenant concerning guarantees of the right of the accused to be tried in his presence, and of the right to an effective defence. If, however, the accused fails to inform the court of a change of domicile and the court continues to address the summons to the previous domicile, that procedure is in full compliance with the rules relating to the summons and in no way infringes the right of the accused to be tried in his presence (Iaşi court of appeal, Judgement in Penal Proceedings No. 67/1994).

153. When considering the situation of an accused person who, after pronouncement of the judgement, had been called up for military service, the court of appeal ought to have issued a summons to him in his military unit. By

failing to do so, it violated the right of the accused to be present when his appeal was heard. As a soldier, he also had the right to have counsel assigned to him if it was impossible for him to have one of his own choosing and if he belonged to one of the categories of persons for whom the law provides for mandatory legal assistance. The decision being null absolutely, the application for remedy was admitted and the case sent back to the court in order for the appeal to be retried (Iaşi court of appeal, Judgement in Penal Proceedings No. 29/1994).

154. Purely formal observance of the right to a defence has also resulted in the quashing of the decisions pronounced by courts that have infringed that fundamental right of the individual. "When allowing the prosecutor's request to extend the pre-trial detention of those accused, the court, instead of taking the necessary measures to inform their lawyers, assigned them another defence counsel. Formally, the requirement of the law was respected; but in practice, the right of those accused to an effective defence was not respected. Assigned counsel was appointed only on the day of the trial, was not familiar with the case, and in consequence formulated conclusions unfavourable to the interests of those accused." The violation of the right of those accused to a defence led to the quashing of the preliminary order to extend the pre-trial detention, and to the referral of the case back to the court for retrial (Constanţa court of appeal, Judgement in Penal Proceedings No. 83/1994).

155. In another case, the court found that, as regards the obligation of the judicial organ to provide legal assistance, the statutory provisions make no distinction between an accused person charged and an accused person committed for trial, nor between the 5-day and 30-day periods of detention provided for in the former and latter cases respectively. The fact that the accused's statement bore an annotation to the effect that he had "been informed of his right to a defence, but that he will exercise it during the proceedings, does not satisfy the requirements to guarantee the conditions for the exercise of the respective right. In the absence of a lawyer of his own choosing, the judicial organ was obliged by law to assign him legal assistance." (Constanţa court of appeal, Judgement in Penal Proceedings No. 153/1994.)

156. In another hearing of an application for remedy, it was found that the statement made by an accused person under arrest during the criminal proceedings had been signed "per pro. legal assistance" by a lawyer not appointed for that purpose and who, furthermore, had not been present at the bar on that day. The court of appeal considered that "the presence of a person (exercising the profession of lawyer) at the examination of the accused, who was neither counsel of his own choosing nor assigned to him by the court, is tantamount to the absence of a defence counsel." The application was admitted and the court's preliminary order quashed. In addition, the accused's complaint was admitted, the detention measure annulled and the accused released (Iaşi court of appeal, Judgement in Penal Proceedings No. 13/1993).

157. The presence of the accused and of his defence counsel is obligatory at all stages of the trial: at first instance, on appeal and on application for remedy. When the accused is convicted of an offence punishable by law with imprisonment for a period of more than two years, the court of appeal is obliged to assign him a lawyer if there is no lawyer of his own choosing. Judgement of the appeal without provision of legal assistance for the accused has led to the

quashing of the court's decision as null absolutely (Braşov court of appeal, Judgement in Penal Proceedings No. 51/1995).

Paragraph 3(e)

158. Ensuring a fair regime with regard to the taking of evidence in general and to the examination of prosecution and defence witnesses in particular has proved a thorny problem in the specific case of the committal of the accused for trial for accepting or soliciting bribes, having been caught in the act in an operation organized with the assistance of an individual who was both the person reporting the offence and also the person offering the bribe.

159. As bribery, too, is an act provided for and punishable under the Penal Code, the usual practice before 1990 was to admit the statements made by the person offering the bribe, who thus became a witness instead of an offender. Such a prosecution witness, who had collaborated with the prosecution authorities in setting up the operation to catch the offender in the act of taking a bribe, was in a privileged position not only vis-à-vis the accused but also vis-à-vis the defence witnesses.

160. After the restoration of democracy in Romania, there was a change in judges' attitude with regard to exoneration of persons who had planted banknotes marked by the police in order to catch the offender in the act of taking a bribe. "The act of inducing a person to offer an official money or other gifts solicited by him to perform an act falling within his duties [...] is equivalent to persuading that person to commit the offence of bribery in order to obtain evidence relating to the offence of accepting bribes. Such an action contravenes the express provisions of article 68 of the Code of Criminal Procedure, which prohibits any coercive measure performed with a view to obtaining evidence, including that of inducing a person to commit a criminal act. [...] Regardless of the aim sought, the State authority may not determine or approve such a situation. A criminal prosecution body is not authorized to secure impunity for any person who has committed an offence under criminal law, such authorization falling exclusively within the powers of the legislature." (Braşov court of appeal, Judgement in Penal Proceedings No. 12/1995.)

Paragraph 3(f)

161. Under the provisions of article 128 of the Code of Criminal Procedure, the right to have the assistance of an interpreter is ensured in judicial practice when one of the parties or another person taking part in the trial does not understand or speak Romanian, whether he is a citizen of another State or a Romanian citizen belonging to a national minority. The interpreter is also required to present the contents of documents drafted in a language other than Romanian. Throughout the proceedings the parties may be assisted by an interpreter of their own choosing. Under the terms of the Constitution, in criminal proceedings the right to an interpreter is ensured free of charge.

Paragraph 3(g)

162. When they come before the court, accused persons often retract statements made previously to the criminal prosecution bodies. Before the introduction of

the mandatory requirement to interrogate the accused in the presence of his lawyer from the outset of the proceedings (an obligation introduced into the Code of Criminal Procedure by Act No. 32/1990), cases undoubtedly arose of accused persons being subjected to threats or even violence, so as to induce them to confess guilt. The obligation to interrogate the accused in the presence of a lawyer has eliminated this risk of coercion; and, even if such coercion were to take place, a jurist is in any case bound by his professional code of conduct to protest in the name of the law and on behalf of his client.

163. Called upon to deliver a decision on the application for remedy lodged by several accused persons convicted of rape, the court considered their allegations that during the criminal proceedings they had been forced into an admission of guilt. It found that throughout the proceedings the accused had repeatedly acknowledged committing the acts, in statements made to the prosecution in the presence of counsel of their own choosing. Moreover, before the court of primary jurisdiction and also during the appeal, they had shown themselves to be incapable of producing credible arguments to refute the evidence of their guilt. Consequently, the application by the accused was rejected (Constanţa court of appeal, Judgement in Penal Proceedings No. 131/1994).

Paragraph 4

164. In the light of the General Comments of the Human Rights Committee (CCPR/C/21/Rev.1), the present report will provide additional information regarding the situation of minors in criminal proceedings. The extent of the criminal responsibility of minors is defined by the Romanian Penal Code as follows:

(a) immunity of minors under 14 years of age from criminal responsibility;

(b) establishment of 16 as the age at which criminal responsibility begins;

(c) minors aged between 14 and 16 are criminally responsible only if it is proved that they have committed the act with due discernment (art. 99).

165. The sanctions applicable to criminally responsible minors are of two types: educative measures (admonition, probation, committal to a rehabilitation centre or a medico-educational institution, as appropriate); and penalties (fines, imprisonment).

166. The sanctions are determined in the light of the degree of danger posed to society by the act committed, the minor's physical state, the stage of intellectual and moral development he has attained, and his general conduct. Account will also be taken of the circumstances in which he has been brought up, and of any other circumstance of relevance to his character (art. 100 (1)). A penalty is imposed only if the court considers that an educative measure would not constitute a sufficient corrective measure (art. 100 (2)). Likewise, the minor is committed to a rehabilitation centre only if the court comes to the conclusion that any other measure would be inadequate (art. 104). "The court's obligation is to establish, in each individual case, what would be the most

appropriate sanction for the purposes of best meeting the need to rehabilitate the minor." (Constanţa court of appeal, Judgement in Penal Proceedings No. 50/1993.)

167. The system of sanctions applicable to minors has changed over the years. For example, under the provisions of a decree of 1977 which remained in force until 1992, only educative measures could be applied to minors. The introduction, by Act No. 104/1992, of custodial penalties as an alternative sanction for minors led judicial practice to adopt wrong decisions, with prison sentences applied (under the system in force on the date of the sentence) in violation of the principle of application of the more favourable law, a principle set forth in article 13 of the Penal Code. The courts of appeal decided that by virtue of that principle, the more favourable law for the minors concerned was the one that had been in force when the offence was committed, that is, the law providing only for educative measures. Thus, decisions to impose sentences of imprisonment for acts committed before 19 December 1992 were annulled, with the courts of appeal ordering the minors to be committed to rehabilitation centres (Iaşi court of appeal, Judgement in Penal Proceedings No. 48/1994; Constanţa court of appeal, Judgement in Penal Proceedings No. 137/1993).

168. During the criminal proceedings, all the general provisions under article 14 of the Covenant are applied to minors, together with some special provisions set forth in chapter II of the Code of Criminal Procedure, entitled "Procedure to be followed in cases involving juvenile offenders". These special provisions are intended to create an adequate system of protection, taking account of the age of the minor and the social benefit to be derived from his undergoing rehabilitation.

169. During the interrogation or examination of an accused minor under 16 years of age, the criminal prosecution body, whenever it deems it necessary, summons the officer of the guardianship authority, parents, guardian, curator or any other person entrusted with looking after the minor or supervising him to appear before the court. While summoning the aforementioned persons to appear remains at the discretion of the prosecution authority during the examination or the confrontation of witnesses, where submission of the criminal prosecution material is concerned the law provides for a mandatory summons (art. 481).

170. Cases involving accused minors are tried by judges appointed by the Minister of Justice. They remain empowered to try minors and to ensure application of the procedural provisions for them, even if in the mean time the accused has attained 18 years of age (art. 483). The trial takes place in the minor's presence. In addition to the parties, the court also summons the guardianship authority, the parents, and, as applicable, the guardian, curator and other persons whose presence it deems necessary, to appear before it. All those summoned to appear have the right and the obligation to submit explanatory statements, and may make requests and proposals concerning the measures to be adopted (art. 484).

171. The session at which the act committed by a minor is tried is held separately from the other sessions, and in camera. Only the persons summoned to appear (pursuant to article 484), the parties' lawyers and any other persons

whose presence has been authorized by the court are permitted to attend. In cases where the accused is between 14 and 16 years of age, the court may, after hearing him, order him to be removed from the courtroom if it is considered that the examination of witnesses and the discussions might affect him adversely (art. 485).

172. Under the provisions of the Code of Criminal Procedure, legal assistance for the minor is obligatory throughout the criminal proceedings, regardless of whether he is investigated and tried while under arrest or while still at liberty (art. 171). If the minor does not have a lawyer of his own choosing, the judicial authority is obliged to assign one to him. Violation of these mandatory rules constitutes grounds for annulment of the court judgement pronounced in the case. The absence of the accused minor when judgement is passed also constitutes grounds for annulment of the judgement, even if he had been present at the previous session and had replied when examined (Supreme Court of Justice, Criminal Division, Decision No. 861/1994).

Paragraph 5

173. As regards the right of everyone found guilty and convicted to have "his conviction and sentence [...] reviewed by a higher tribunal", the Committee's recommendations call for further comment. The present Romanian Penal Code, adopted in 1968, draws no distinction between serious and minor offences, so that the regulations concerning the right to appeal to a higher court against a judicial decision are applicable to all offences. Under Act No. 45/1993 modifying and supplementing the Code of Criminal Procedure, there are currently two ordinary remedies, namely, appeal and application for remedy.

174. Article 361 of the Code provides a limitative list of some exceptions to the general rule whereby decisions of primary jurisdiction may be contested on appeal, whereas decisions pronounced on appeal may be contested on application for remedy. These decisions, which may not be appealed against, may also be reviewed by a higher body (art. 385^{1}).

175. Those exceptions were determined by reference to two criteria:

(a) first, offences in respect of which criminal proceedings are initiated only following a complaint lodged by the injured party, where conciliation of the parties eliminates criminal liability (striking, unintentional violation of the person, threats, intentional defamation, insulting behaviour, thefts between spouses or relatives, misappropriation, etc.); that is, lesser offences for which the legislature deemed the existence of a single dispute procedure, namely, application to a higher court for remedy, to be sufficient;

(b) secondly, offences so serious and complex that at the outset primary jurisdiction over them was assigned to the higher courts (such as the courts of appeal and the Military Court of Appeal, or the Criminal and Military Divisions of the Supreme Court of Justice), whose decisions may be directly challenged on application for remedy. (In these cases, competence to deliver a decision lies with the Criminal or Military Divisions and the united divisions of the Supreme Court of Justice respectively.)

176. For certain reasons set forth in the Code of Criminal Procedure, the appellant has the possibility of availing himself of special remedies against final judgements in penal proceedings, namely, application to set aside (art. 386), and application for judicial review of the facts (art. 394).

177. Although the special remedy of annulment proceedings (art. 409) cannot be exercised directly by the person convicted, it should be pointed out that he may draft a statement of case addressed to the Procurator-General or the Minister of Justice, requesting him to bring annulment proceedings. This procedure is frequently used, and a substantial proportion of actions by the Procurator-General to seize the Supreme Court of Justice of annulment proceedings are based on statements of case filed by persons on whom final sentence has been passed.

178. It should also be pointed out that the Code distinguishes two categories of circumstances in which there is legal provision for the bringing of annulment proceedings, one expressly concerning situations in which the annulment proceedings may be brought "only in favour of the person convicted", the other referring to cases in which the bringing of the annulment proceedings "affects the situation of all the parties to the proceedings". However, with regard to the latter category, most cases relate to situations (such as an act that is not a criminal offence; expiry of the statute of limitations for the penalty; the existence of a reason for exemption from criminal liability; force of res judicata; pardon; error of fact; illegality of the decision by the judges exercising primary jurisdiction) which, once proved, may lead to no outcome other than decisions in favour of the person unjustly convicted.

179. Practice consistently respects the fundamental principle of judicial remedies whereby the situation of the person convicted cannot be rendered worse as a result of the hearing of his own appeal. Called upon to deliver a decision on the application for remedy lodged by a former manager of a commercial entity convicted of fraudulent management, the court of appeal found that the classification of the act at law was incorrect, as the act in question exhibited all the characteristics of embezzlement of funds. But in view of the fact that the Penal Code provides for a heavier sentence for the latter offence, the court of appeal did not change the classification at law (established by the court of first instance and confirmed by the departmental court, on appeal), on the grounds that the prosecution service had not filed an application and that the application filed by the person convicted could not be used against her (Ploieşti court of appeal, Judgement in Penal Proceedings No. 421/1994).

Paragraph 6

180. Any person convicted by a final decision has the right to compensation by the State for the damage sustained, if a new trial of the case reaches the final decision that the person did not commit the act of which he was accused or that the act did not take place. An exception to this rule is the case of a person who during the criminal proceedings or the trial has, intentionally or through serious fault, hindered or tried to hinder the establishment of the truth (Code of Criminal Procedure, art. 504).

181. Practice seeks to ensure full compensation for the damage sustained by the person unjustly convicted. In order to ensure that the injured party is

compensated in full, the amount of the compensation must be established at the time of delivery of the decision in the criminal indemnification action by increasing the value of the material compensation to take account of inflation (Supreme Court of Justice, Civil Division, Decision No. 1095/1994).

182. A fair assessment of the compensation requested by the victim of a judicial error must also take account of all the income of which the person arrested and convicted was deprived during his detention, that is, the basic wage and supplement for the full duration of the work and all other supplements payable up to the time of the final decision on the dispute, as well as financial compensation for any holidays not taken. Account is also taken of legal costs and of costs of subsistence incurred in prison, substantiating documentation concerning which is placed in the file by the complainant. As for requests by the representative of the State that the costs incurred by the State in respect of the complainant's subsistence in the place of detention should be deducted from the compensation thus calculated, the Supreme Court of Justice found that there is no legal basis to justify the return of benefits that are not imputable to the recipient and that were directly determined by his unlawful arrest and detention (Supreme Court of Justice, Civil Division, Decision No. 10/1993).

183. With regard to the scope of application of the provisions of article 504 of the Code of Criminal Procedure, some bodies have considered that the expression "the act has not taken place" would have a broader scope than the similar expression in article 10 of the Code of Criminal Procedure, which provides, among other causes that prevent the initiation or continuation of the criminal proceedings, for the situation in which "the act is not an offence in criminal law". Consequently, the Braşov court of appeal considered in this case that an act that has taken place and is lawful from a pragmatic standpoint, which does not fall within the scope of criminal law but which, through a judicial error, has led to the conviction of a person, may be invoked after the retrial and acquittal of that person, with a view to obtaining the compensation provided for under article 504. "Given that the text of that article defines in general terms the hypothetical situations in which compensation is admissible and makes no reference to the provisions of article 10 of the Code of Criminal Procedure, its content must be determined independently, without reference to a text to which the regulations do not allude. From this perspective, one may accept that the legal hypothesis of the act not having taken place (art. 504) includes in its scope of application, at least partially, cases in which the act is not an offence in criminal law. [...] A logical interpretation of the text makes such a conclusion inevitable, given that a narrow interpretation of this provision might lead to the absurd affirmation that the exercise of a fundamental right, which resulted at a given point in time in an unjust conviction, would exclude the right to compensation simply because the [lawful] act has taken place." (Braşov court of appeal, Judgement in Penal Proceedings No. 2/A of 3 March 1994.) The judgement was published in the 1995 Law Reports with the following note: "The judgement was quashed by the Supreme Court of Justice, which found the compensation measure inadmissible in a case where the person had been acquitted under article 10, because 'the act is not an offence in criminal law'." Giving its own grounds for the inclusion of the annulled judgement in the Law Reports, the Braşov court of appeal considers it "feasible and potentially of value to continue the discussion on this subject". In the view of the author of the present report, the inclusion therein of this case and

of the interesting commentary to which it gave rise is justified by the need to respond to the concerns expressed by the Human Rights Committee regarding the efforts being made by Romanian magistrates to ensure citizens a fair trial in accordance with the requirements of article 14 of the Covenant.

Paragraph 7

184. The previous report (CCPR/C/58/Add.15, para. 110) described the provisions of domestic law embodying the principle of force of res judicata. Judicial practice considers that force of res judicata exists even if the act on which final judgement has been passed has received another classification at law; for no one may be held responsible more than once for the same act. When in his appeal the accused person who has been convicted invokes the decision of another court whereby, after the first conviction (against which he is appealing), he has been tried for and convicted of the same act, the exception of force of res judicata will be invoked in the second trial when the appeal is judged (Ploieşti court of appeal, Judgement in Penal Proceedings No. 260/1994).

Article 15

185. In practice, the most frequent cases of application of the more favourable law in penal proceedings have arisen since the entry into force of Act No. 104/1992. In the case of juvenile offenders tried for acts committed prior to the entry into force of that law, the principle of the applicability of the more favourable law has led to the imposition of sanctions taking the form of educative measures, even if in the mean time the minors have attained the age of majority, that is, 18 years of age (Constanţa court of appeal, Judgements in Penal Proceedings Nos. 134 and 137/1993). The information provided in paragraph 167 (concerning article 14) is also relevant to the application of the principle of the more favourable law.

186. Primacy of the more favourable law is also respected in the case of suspension of execution of the penalty, a situation for which Act No. 104/1992 made prior and full making good of the damage a universal condition (whereas the previous law had laid down that condition only in the case of damage to public property). When the act was committed prior to the entry into force of the new Act, the courts have ordered the suspension of execution of the custodial penalty, even if the damage to individuals' property had not been fully made good by the date of the judicial decision (Braşov court of appeal, Judgement in Penal Proceedings No. 33/1995).

Article 16

187. There have been no new developments at legislative level or in judicial practice since the submission of the information provided in the third periodic report (CCPR/C/58/Add.15, paras. 112-113) concerning the right of everyone to recognition as a person before the law.

Article 17

188. The legislative framework concerning application of the provisions of article 17 of the Covenant was described in paragraphs 114 to 117 of the third

periodic report of Romania (CCPR/C/58/Add.15). By virtue of the right of every individual to the protection of the law against arbitrary or unlawful interference with his home, judicial practice considers that there is a concurrence of offences where an accused person committed for trial for theft has entered the home of the injured party and there is no relationship of family or friendship, or any other relationship between them, indicative of the injured party's consent to be visited in his home. "Even if the violation of the home was perpetrated in order to commit a theft, the unauthorized entry into the injured party's home without his consent retains its autonomy as an offence, resulting in the perpetrator's conviction for both offences." (Ploieşti court of appeal, Judgement in Penal Proceedings No. 368/1994).

189. One of the undesirable side-effects of the exercise of the rights of freedom of expression, and, especially, freedom of the press, is the increase in the number of proceedings brought for the offence of intentional defamation. The fact that in recent years the courts have obliged the perpetrators of intentional defamation to pay considerable sums in non-material damages, together with the initiative by some newspapers to make public the judicial decisions convicting journalist colleagues from other newspapers, leads one to hope that in future respect for the honour and reputation of all individuals will become the norm typifying the proper expression of opinions, without recourse to insults and intentional defamation.

Article 18

190. The previous report (CCPR/C/58/Add.15) described the constitutional provisions guaranteeing freedom of thought, conscience and religion, as well as independence of the churches vis-à-vis the State, in its paragraphs 118 to 127.

191. Because of the hostile and arrogant attitude of the authorities towards religious denominations under the Communist regime, in recent years judicial practice has been confronted with the question whether it would still be possible to annul donations to the State made under duress by heads and members of various denominations; or whether, on the contrary, their right of action should be regarded as extinguished once more than three years have elapsed since the signing of the deed of gift.

192. In one case of this type, having found that the deed of gift of a piece of land and a building belonging to the Adventist Church had been prompted by physical and mental intimidation of the head of that Church and of certain of its members, the court came to the conclusion that violence constitutes not only a defect of consent such as to lead to the annulment of the donation, but also a reason for suspension of the course of the prescription. "Thus, the moment at which the violence ceased to take place, by reference to which one may pinpoint the start of the term of prescription, must be considered in relation to the end of the totalitarian Communist regime, which, throughout its existence, occupied a position of force vis-à-vis the religious denominations, rendering it inconceivable that a court action could be brought invoking as grounds for annulment the violence exerted by the authorities in order to obtain by coercion what were alleged to be donations to the State." Consequently, the application for annulment of the donation was admitted on the grounds of defect of consent (Ploieşti court of appeal, Civil Judgement No. 1604/1994).

Article 19

193. The information provided in the previous report (CCPR/C/58/Add.15, paras. 128-135) needs to be supplemented, in view of the fact that judicial practice in sentencing the perpetrators of certain criminal acts has prompted lively comment in the press regarding the limitation of the exercise of freedom of expression with a view to ensuring respect of the rights and reputations of others, as provided in article 19, paragraph 3, of the Covenant. The authors of the defamatory statements published in various newspapers and periodicals rejected the accusation of intentional defamation, basing themselves on the permissibility of ridiculing attitudes and individuals by the means characteristic of pamphlets and satirical journals. The injured parties, and also a number of readers, protested, finding those attempts at justification forced and unreasonable.

194. Also controversial was the legislative initiative intended to modify and supplement some articles of the Penal Code concerning insults and intentional defamation (arts. 205 and 206). After lengthy debate in Parliament the proposal to introduce new subparagraphs into those articles, providing for more severe penalties for insulting or intentionally defaming persons in the press, was rejected.

195. The draft law modifying the Penal Code and Code of Criminal Procedure also envisaged other regulations concerning the need to defend the respect due to the authorities. To that end, it established increased penalties for offences against the public authorities (article 238 of the Penal Code) and offences against persons holding official positions (ibid. art. 239). The draft also envisaged including a new subparagraph imposing more severe penalties for insulting a public official by means of abuse, intentional defamation or threats made public through the press, audiovisual or other media or at public meetings.

196. With regard to the possibility of subordinating exercise of the right of everyone to receive information and ideas of all kinds to certain restrictions necessary for the protection of national security and public order, mentioned in article 19, paragraph 3(b), the same draft law prompted controversy, because of the amendment tabled by the Senate proposing the introduction into the Penal Code of a new article 168^1, sanctioning "the communication or dissemination, by any means, of news, information, false information or forged documents, if the act is such as to harm the security of the State or Romania's international relations".

197. The proposals to introduce into the Penal Code the offence of "public defamation, by any means, of the Romanian State and nation" (art. 236^1, together with a new subparagraph to article 236 sanctioning "the act of flying the flag, displaying other national emblems, or of publicly singing the national anthem of another State, in situations other than those provided for by law", provoked protests from representatives of the Democratic Union of Magyars of Romania and of the civic organizations. Finally, after lengthy debates and several redraftings of the text, adopted by both chambers of Parliament, the draft law as a whole was rejected by Parliament. Consequently, many other amendments to the Penal Code and the Code of Criminal Procedure, including the proposed amendment concerning article 200 (1) (under which sexual relations between

persons of the same sex would be a criminal offence only if they are "committed in public or lead to public scandal"), have remained pending.

Article 20

Paragraph 1

198. In the light of the recommendations and comments of the Human Rights Committee, mention should be made of the fact that "propaganda for war", a criminal offence under the Romanian Penal Code, is regarded as one of the most serious offences, being included in Title XI - "Crimes against peace and humanity" (together with genocide and inhuman treatment). It is punishable by 5 to 15 years' imprisonment, deprivation of certain rights and partial confiscation of property (Penal Code, art. 356).

Paragraph 2

199. The previous report referred to the constitutional provisions prohibiting incitement to national, racial or religious hatred. The Penal Code punishes with six months' to five years' imprisonment "nationalist-chauvinist propaganda, incitement to racial or national hatred" (art. 317). "Propaganda of a fascist nature disseminated publicly by any means whatsoever shall constitute an offence punishable by 5 to 15 years' imprisonment and deprivation of certain rights." (art. 166.)

Article 21

200. Act No. 60/1991, the Public Assemblies (Organization and Conduct) Act, regulates in detail the conditions necessary to organize meetings, demonstrations, functions, parades and any other form of assembly. The principal condition is that any public assembly must be conducted in a peaceful manner, and without any kind of weapon.

201. The Act provides that public assemblies to be held in public squares, on the public highways and in other open spaces may be organized only after a written notification has been deposited with the local administration, three days prior to the event, specifying the name of the organizing group, the purpose, date, place, starting time and duration of the event, the arrangements for access and dispersal, the estimated number of participants, the persons entrusted with the task of organizing the event and taking responsibility for it, and the services the organizers are requesting the local authorities and local police to provide. Where justified, the local authorities may, with the organizers' consent, alter some details of the preliminary notification.

202. There is no compulsory requirement to give notification of public assemblies of a cultural, artistic, sporting, religious or commemorative nature; events occasioned by official visits; and assemblies held inside the headquarters of or premises belonging to public or private corporations. If the organizers have information or indications suggesting that disorderly acts or violent demonstrations are likely to take place, they are obliged to submit a timely request for specialist assistance from the local authorities and police.

203. Pursuant to Act No. 60/1991, the peaceful and civilized character of public assemblies involves ensuring the protection of the participants and the surroundings; respect for traffic on public highways (except where an application to use the public highways has been approved); respect for the functioning of public and private cultural, educational and health institutions; and measures to ensure that assemblies do not degenerate into disturbances such as to imperil public order, the safety of persons, physical integrity, life and private or public property.

204. If they have information indicating that the holding of an assembly of which notification has been given might lead to a violation of the aforesaid provisions, or if public works are scheduled to be carried out on the date, at the place or on the highways envisaged by the organizers of the assembly, the local authorities may prohibit the holding of the assembly. The decision must be communicated in writing to the organizers, with an explanatory statement, no more than 48 hours after the submission of the written notification.

205. The local authorities and local police are obliged to guarantee the necessary conditions for the smooth running of any public assembly that has previously been notified and approved. In cases where public assemblies cease to be peaceful and civilized, the police and gendarmerie units are required to intervene to halt demonstrations that disturb public order and that might pose a threat to the lives and physical integrity of citizens and of the forces of public order, or are likely to lead to the destruction of buildings and other property.

206. Only the Prefect, the mayor or their substitutes may take a decision to allow the police to intervene in force, at the request of the chief of the local police force or his delegate appointed to ensure that the demonstration takes place in an orderly manner. Equipment available to the forces of order may be used only after the participants have been signalled, by means of a warning sound or light, to disperse. The forces of order are required to allow a certain time - determined by the number of participants and the dispersal routes available - to elapse, so as to enable the participants to disperse. No warning and challenge are necessary if the forces of order are directly subjected to violence or if they are in immediate danger. In case of absolute necessity, when the use of firearms by the forces of order is essential, they must first give one last warning, using amplified sound and a flashing red light. Use of the means of restraint will cease as soon as the participants have been dispersed and public order restored.

Article 22

207. The legislative framework regulating the right of all persons to freedom of association, including the right to form trade unions for the protection of their interests, was described in the previous report (CCPR/C/58/Add.15, paras. 141-144). Trade unions play an active role in negotiating collective labour agreements in Romania, in accordance with the statutory provisions on the matter (Act No.13/1991, the Collective Labour Agreements Act); as well as in resolving collective labour disputes (pursuant to Act No. 15/1991).

208. The experience accumulated in the six years since the recognition of the right of persons to form political parties has led to the need for a law on political parties, to provide an appropriate framework for the smooth functioning of the principle of political pluralism, representativeness of the political parties participating in elections, and statutory conditions for the financing of the parties' activities. This draft law is on Parliament's agenda and is expected to be put to the vote around the end of the first quarter of 1996.

Article 23

209. The third periodic report (CCPR/C/58/Add.15, paras. 145-153) gave extensive details of the provisions of the Constitution and of the Family Code regulating the right of the family to protection by the State and society, the right of men and women to marry and found a family by free consent, as well as guarantees of equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.

210. In the light of the General Comments adopted by the Human Rights Committee in September and November 1989 (CCPR/C/21/Rev.1/Add.1 and 2), the present report offers the following additional information:

(a) the marriageable age of 18 for men and 16 for women, established in domestic law, reflects the future spouses' capacity freely and fully to express their consent to the marriage, and their capacity to exercise fully the other rights guaranteed by the Covenant, such as freedom of thought, conscience and religion;

(b) the Constitution recognizes the right of the spouses to marry in a religious ceremony, subject solely to its being held after the civil marriage. In practice, the religious ceremony usually takes place on the same day as or a few days after the civil marriage, unless the spouses prefer to delay it longer;

(c) with abortion and contraception permitted and total freedom of the spouses to decide on the number of children they wish to have, the State's family planning policy is aimed solely at encouraging the spouses to have children, through health and religious education measures, periodic publication of demographic indicators (which have shown a marked fall in the birth rate in recent years), and financial support to families with children (State benefits, allowances and other forms of assistance);

(d) there are no statutory restrictions on spouses living together, setting up a shared home or residence, or reunification of families separated in the period of the Communist dictatorship when, for political, economic and other reasons, one spouse may have left the country or the parents may have settled abroad, leaving the children in Romania;

(e) as regards the acquisition or loss of citizenship through marriage, there is no de jure or de facto discrimination based on sex, the decision being taken jointly by both spouses;

(f) equality between the spouses is at the basis of the statutory provisions concerning their right to decide on any matter relating to family

life, the establishment of a home, management of household tasks, education of the children, administration of property; and also, in a situation of de facto separation or divorce, when a decision is taken on which spouse is to have custody of the children, the maintenance due to the children, visiting rights, etc. Any discrimination based on sex is inadmissible, and practice confirms this constitutional principle. Whenever the problems discussed concern the child, the guiding principle is his or her best interests.

211. In divorce proceedings, when it is decided which of the spouses is to have custody of the children, the court must not take each spouse's material circumstances and the accommodation each can offer as its sole criterion. "The interests of the minor also require that account be taken of the conduct of the parents towards the child in the period before and after their separation, the degree of attachment and concern they have shown, the age of the child and its emotional links with each of its parents, as well as - if there is more than one child - the need for them to remain together. In such cases, separation of the children at a crucial stage in their development is an extreme measure, justifiable only if neither parent individually can provide the material resources that would enable the children to be brought up together." (Ploieşti court of appeal, Civil Judgement No. 1505/1994.)

212. Article 43 of the Family Code establishes the right of the divorced parent who does not have custody of the child to maintain a personal relationship with the child, and to be involved in his development, education and vocational training. Given that the text of the Code does not provide for, but at the same time does not rule out, the right of the grandparents to visit their grandchildren, the courts allow such measures pursuant to article 94 of the Family Code, which provides that the grandparents too are obliged to look after a grandchild who is a minor, if the mother is dead. "The arrangements for maintaining links with the minor, whereby the minor is brought to the grandparents' home twice a month at the weekend, [...] recognize the emotional links between them, offer the child the joy of regaining a family circle, and avoid the negative influence that the right of the grandparents to visit the child at the home of the father - whose relations with his former parents-in-law are tense - might have on the child." (Ploieşti court of appeal, Judgement No. 2008/1994.)

213. The equality of the parents vis-à-vis the children is also reflected in the equality of the maternal and paternal grandparents. In one case, a girl minor whose mother was dead, finding herself in the home of her paternal grandparents following her father's departure abroad, was subsequently assigned the maternal grandparents as her guardians. As the maternal grandparents refused to allow the paternal grandparents to maintain a personal relationship with their granddaughter, the paternal grandparents brought a court action. "The decision to admit the action, delivered by the court exercising original jurisdiction and confirmed by the court of appeal, is lawful. In the circumstances that obtain - when the sole surviving parent has left the country - the minor needs the care and affection of maternal and paternal grandparents alike. To separate the minor from either would be contrary to her best interests." (Supreme Court of Justice, Civil Division, Decision No. 321/1994.)

214. The elimination of any discrimination between the spouses requires that, in any court proceedings between them, they should have equal possibilities with regard to the submission and production of evidence. "The fact that, during the hearing of the divorce proceedings, the respondent declared that he consented to the dissolution of the marriage, cannot constitute a justification for the failure of the court exercising original jurisdiction to hear the witnesses produced by himself in this case." (Braşov court of appeal, Decision No. 693/1994.)

Article 24

215. Practice, whether in the area of legislative, administrative or judicial measures, shows that, in the spirit of the Human Rights Committee's recommendations, the expression "without any discrimination" in the first paragraph of article 24 of the Covenant is interpreted in the meaning defined by the International Convention on the Elimination of All Forms of Racial Discrimination (referring to any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin), as well as by the other provisions of international human rights texts prohibiting any distinction, exclusion, restriction or preference based on sex, language, religion, opinion, property, birth or any other situation such as to compromise the full and equal exercise of fundamental rights and freedoms.

216. A decree-law of 1990 regulated the compensation due to persons who had been persecuted under the Communist regime because of their political and religious opinions or their ethnic or social origin. That category also included persons who, for the reasons enumerated, were obliged to leave their locality or their domicile and to settle in other, generally isolated, localities and in precarious circumstances (compulsory domicile). A few of the departmental committees empowered to decide what persons are entitled to compensation refused to take into consideration applications by persons who were minors on the date of the enforced displacement. Judicial review, and above all the decisions of the Supreme Court of Justice, invalidated those decisions, on the grounds that the repressive policies applied to the parents were also such as to result in material and moral effects detrimental to the children, who, under the provisions of the Family Code, have their domicile at the parents' domicile during the period of their minority. "To exclude from the benefits of that compensatory law those who, being minors at the time, suffered along with their parents, would constitute a discriminatory measure not intended by the legislature." (Supreme Court of Justice, Civil Division, Decision No. 2028/1993.)

217. Another socio-legal problem with which the courts have had to deal when establishing the injury sustained concerns minors who have been victims of rape. It was considered that the prerequisite for fair compensation of the victim is the existence of a causal relationship between the offence committed and the immediate or longer-term difficulties the minor will encounter in her efforts to become reintegrated in normal social life and to overcome the social handicap caused by the rape. In assessing the handicap, account was taken of the victim's age, her family's material circumstances, and her social background, including the traditions prevailing in the community in which she lives (determining, for instance, the importance attached to a bride's virginity).

218. In order to reduce the social and moral harm inflicted, which was exacerbated by the fact that the offender's trial had made the victim's identity common knowledge, the court awarded her moral damages such as to secure her a level of educational and cultural attainment higher than that normally encountered in the community in question. An appeal by the prosecutor in connection with the moral damages was rejected (Braşov court of appeal, Judgement in Penal Proceedings No. 449/1994).

219. In accordance with the General Comments formulated by the Committee (CCPR/C/21/Rev.1), this report will describe the measures initiated by the State with a view to securing full application of the provisions contained in the international conventions concerning the rights of the child to which Romania is a party.

220. On 4 December 1995 Government Decision No. 972 adopted the National Programme of Action for the Child, a framework document establishing the priority areas and general orientation of action to improve children's lives. The task of coordinating and securing the application by responsible agents of the measures taken in support of children falls to the National Committee for the Protection of the Child, an interministerial body set up in 1993 to draft the Government's strategy in this area.

221. The National Programme of Action for the Child covers the following areas:

I. Ensuring the rights of the child, by: (a) implementation of the recommendations of the United Nations Committee on the Rights of the Child (evaluation of the impact of the economic transition on children and adoption of appropriate protection measures; according absolute priority to actions initiated for the protection of children in the process of establishing budget allocations; consolidation of the role of the National Committee for the Protection of the Child in monitoring respect for the rights of the child in Romania; promotion of research into child abuse, including abuse within the family, and preparation of effective means for rapid intervention; further training of staff working with children; improvement of the legislative framework concerning adoption so as to avoid possible harm to the best interests of the child; improvement of the system of administration of justice for minors and training of specialized staff; continuation of the active policy of non-discrimination in matters of protection of the child, with special reference to children of persons belonging to minorities and, especially, Romany children, so as to stimulate their participation in social life and reduce the social impact of existing prejudices, etc.); (b) monitoring, by the National Committee for the Protection of the Child, of respect for the rights of the child, in cooperation with other authorities of the central and local public administration, with nongovernmental structures, and with the Centre for Human Rights and other international bodies.

II. Ensuring the health of the child: implementation of the Ministry of Health programme to reduce maternal and infant mortality; development of the national network of medical services for family planning and reproductive health; continuation of the national programmes for immunization of infants and children against communicable diseases, including hepatitis B; review of the system of medical care for children.

III. Evolution and development of the child: initiation of nutritional programmes for children and families in difficulties; diversification of food products for children; establishment, at national level, of guidelines for a balanced and diversified diet for pregnant women and for children; correction of inadequate diet so as to eliminate iodine and iron deficiencies; periodic examination of children's and adolescents' state of health.

IV. Education of the child: introduction of measures to improve pre-school, primary and secondary education, adaptation of school curricula so as to permit the study, understanding and application of the provisions of the Convention on the Rights of the Child; introduction of new subjects in schools - religious studies, civic culture, and education in moral and civic issues - to meet the requirements of a democratic and pluralist society and the need to integrate children in social life; development of education for children with special needs, etc.

V. Protection of the family, the ideal environment for the child's development.

VI. Children in difficulties: (a) guaranteeing the right of children without a family - orphans, abandoned or neglected children and those at risk in their own families - to be brought up in another family or in a similar environment, without distinction on account of age, illness, disability or the school they attend; (b) supporting children with deficiencies; (c) rehabilitating maladjusted children, including street children, through programmes to identify them and place them in behavioural rehabilitation and medico-educational centres, with involvement of local authorities and NGOs in the management of the problems associated with street children, etc.

VII. Juvenile delinquents: legal protection of juvenile delinquents and prevention of delinquency (social rehabilitation, training of judges specializing in cases involving minors; creation of special detention and re-education centres for juvenile offenders, etc.

VIII. Role of women in society and improvement of children's living conditions.

IX. The framework of laws and regulations concerning children: the central and local public authorities are called upon to develop and enumerate areas for action, using budgetary and extrabudgetary resources, as well as aid in the form of technical and financial assistance provided by UNICEF, the European Union and the United States Agency for International Development (USAID). Every two years the National Committee for the Protection of the Child will organize meetings (national conferences) to evaluate respect for the rights of the child.

Article 25

222. The previous report (CCPR/C/58/Add.15, paras. 170-177) described the legal framework whereby every Romanian citizen is enabled to exercise, without any of the distinctions mentioned in article 2 of the Covenant and without unreasonable restrictions, the right to take part in public life, to vote and to be elected, and to have access, on general terms of equality, to public service. After the

submission of that report, local elections were held in spring 1992, followed by parliamentary and presidential elections in the autumn of the same year.

223. Following the local elections a considerable number of persons belonging to national minorities were elected to the local administrative structures, as mayors, deputy mayors and councillors of the communes, towns and municipalities (3,307 Magyars, 205 Germans, 152 Ukrainians, 111 Serbs, 106 Romany/Gipsies, 100 Russo-Lipovans, 67 Slovaks and Czechs, 60 Turks, etc.). In the elections for the Senate and the Chamber of Deputies, the Democratic Union of Magyars in Romania obtained 7.46 per cent of the votes cast for the Chamber of Deputies and 27 member's mandates, and 7.59 per cent of the votes cast for the Senate and 12 Senator's mandates. Thirteen other organizations of persons belonging to national minorities obtained a parliamentary representation, benefiting from the provisions of article 59 of the Constitution whereby "organizations of citizens belonging to national minorities, which fail to obtain the number of votes needed for representation in Parliament, have the right to one seat each in the Chamber of Deputies under the terms of the electoral law."

224. With regard to the right of every citizen to take part in the conduct of public affairs, directly or through freely chosen representatives, some of the cases of judicial practice that have been cited in this report concern mayors suspended from their duties who have had recourse to the courts in order to obtain the annulment of suspension orders issued by the Prefects as representatives of the Government in the departments. Under article 46 of the Local Administration Act, the Prefect may order the suspension of the mayor for the duration of a judicial investigation. When in a given case it has not been proved that, prior to his suspension, the prosecution services were already investigating an offence allegedly committed by the mayor, it is not sufficient to invoke article 46 of the aforesaid Act. "The requirement to cite reasons for the suspension not only serves an informative function for the person against whom the measure is directed, but must also constitute a guarantee that no measures will be taken against him such as to jeopardize the security of the function acquired" [through elections]. (Supreme Court of Justice, Administrative Litigation Division, Decision No. 30/1994.)

225. The removal of the mayor from his elected office calls into question not only his own right as a citizen to take part directly in the conduct of public affairs, but also the right of the citizens who have elected him to exercise such participation. Consequently, Act No. 69/1991 provides that a mayor may be dismissed only in exceptional circumstances for which there is express provision in law, when his decisions contravene the general interests of the State, constitute an infringement of the legal order, or intentionally compromise the interests of the commune or town.

226. Called upon to deliver a decision on the application for remedy brought by a dismissed mayor against the decision by the court of appeal to dismiss his appeal, the Supreme Court of Justice found that decision had been founded exclusively on the affirmations of the Prefect, and that no attempt had been made to establish whether they were well-founded. In view also of the fact that the former mayor "had consistently denied, orally and in writing, committing the offences attributed to him, the court exercising primary jurisdiction was under an obligation to use every available legal means, including recourse to experts

if appropriate, to establish the truth and to prevent any possible error in the correct determination of the facts." For that reason the application was admitted and the decision of the court of appeal quashed (Supreme Court of Justice, Administrative Litigation Division, Decision No. 179/1994). It should here be mentioned that, at the time when this report was being drafted, the Romanian Parliament was preparing to consider a draft text formulated by the Government modifying the Act in question.

227. The right to vote and to be elected is among the rights whose exercise may be suspended for a limited period, by the court decision convicting the accused, under the terms set forth in the Penal Code. The Code defines deprivation of certain rights as an additional penalty that may be applied only if the principal penalty pronounced on the accused exceeds two years' imprisonment and the court finds that, having regard to the nature and seriousness of the offence, the circumstances in which the act was committed and the personal data concerning the person convicted, an additional penalty is necessary (art. 65). The same conditions apply with regard to disqualification from the right to hold public office for a specified period (as well as for the other interdictions listed in article 64 of the Penal Code, on additional penalties).

228. In accordance with the requirements of article 25 of the Covenant, which allows for the possibility of restricting exercise of the right to vote, to be elected and to have access to public service, but only within reasonable limits, violation of the conditions set forth in the Penal Code constitutes grounds for quashing the conviction. For that reason the Supreme Court of Justice has ordered the suppression of the additional penalty when, through a misinterpretation of article 65 of the Penal Code, the courts have established a link between the two-year minimum duration of the sentence and the limitations on the principal penalty for a particular offence established in the Penal Code, instead of referring to the principal penalty actually imposed on the accused (Supreme Court of Justice, Criminal Division, Decision No. 169/1994).

229. In the case of less serious offences, for which the Penal Code does not expressly provide for deprivation of certain rights in addition to the principal penalty, the court has the possibility of pronouncing the additional penalty, but only where there are circumstances such as to lead to a reasonable fear that if he retained the enjoyment of certain rights the offender might abuse them, thereby undermining political life or violating the rights of others, or that he might commit another offence. If, when pronouncing a judicial decision to impose the additional penalty of deprivation of certain rights for an offence not thus regulated in the Penal Code, the court has failed to cite reasons for its decision, that decision is unlawful (Ploieşti court of appeal, Judgement in Penal Proceedings No. 201/1994).

Article 26

230. The General Comments of the Human Rights Committee concerning the contents of periodic reports (CCPR/C/21/Rev.1/Add.1) stressed the relationship between the provisions of article 2, paragraph 1 (which requires that each State party respect and ensure to "all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status") and the

provisions of article 26 (which require the State party's law to "prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"). Consequently, the information provided in the present report concerning application of article 2, paragraph 1, of the Covenant also reflects application of the principle of equality of all persons before the law in accordance with the provisions of article 26 of the Covenant. The report has also described the legislative and administrative measures taken to benefit certain groups within society: organizations of persons belonging to national minorities (who are represented in Parliament, even if they do not succeed in obtaining the necessary number of votes); women (through recent promotions to posts of State Secretary); disabled people, abandoned minors (through social protection measures), etc.

231. Mention has also been made of the statutory provisions adopted in order to guarantee certain specific rights to persons who were persecuted under the Communist regime because of their political and religious beliefs or their social origin; and examples have been given of administrative and judicial measures taken to ensure proper application of those statutory provisions. The same prescriptive act (Decree-Law No. 118/1990) also provided for measures to compensate persons who had been held prisoner in the territory of the former Soviet Union.

232. Among those requesting compensation were inhabitants of northern Transylvania, which was annexed by Hungary in 1940 under the terms of the second Vienna Award and whose inhabitants were compelled to enlist in the Hungarian army. Some of the committees set up to secure application of Decree-Law No. 118/1990 considered that those persons should receive such compensation from Hungary, which in 1992 adopted a similar law under which citizens of other countries not domiciled in Hungary also benefited. The view of those committees was shared by some Romanian courts.

233. Called upon to deliver a decision on the appeal lodged against one such judicial decision, the Braşov court of appeal found that "the purpose of the mention made, in Decree-Law No. 118/1990, of the date 23 August 1994 and of the armistice agreement, was to delimit the period within which the rights provided for therein are guaranteed, not to restrict the circle of persons benefiting therefrom, on grounds of their ethnic origin or the citizenship they held at the time when they were taken prisoner". The legislature established a universal provision applicable to all persons who were Romanian citizens on the date of formulation of the request and fulfilling the conditions laid down by the aforesaid Decree-Law. "A proliferation, through interpretation, of the number of cases to which the Decree-Law does not apply, contravenes the strictly jurisdictional competence specific to the courts." Consequently, the decision was quashed and the appeal admitted (Braşov court of appeal, Civil Decision No. 758/1994).

Article 27

234. According to preliminary data from the 1992 census, the ethnic structure of Romania's population is as follows: 89.3 per cent Romanians and 10.7 per cent

persons belonging to various national minorities (Hungarians, 7.1 per cent; Gipsies, 1.8 per cent; Germans, 0.5 per cent; Ukrainians, 0.3 per cent; Russo-Lipovans, 0.2 per cent; Turks and Tatars, 0.2 per cent, etc.).

235. The provisions of the Romanian Constitution and of other relevant acts setting forth the rights of persons belonging to national minorities were described in the third periodic report of Romania (CCPR/C/58/Add.15, paras. 181-191). The present report will provide additional information concerning institutional developments that have taken place, together with updated information regarding guarantees of the right of persons belonging to national minorities to enjoy their own culture, to profess and practise their own religion, or to use their own language.

236. In order to ensure the broadest possible framework for participation by such persons in public life, and, in particular, in the formulation of measures to deal with their own specific problems, Government Decision No. 137/1993 established the Council of National Minorities, a consultative body of the Romanian Government bringing together representatives of organizations of citizens belonging to minorities and a number of State bodies (the Ministries of Foreign Affairs, Justice, Finance, Labour and Social Protection, Public Works and Planning, and Youth and Sport, the State Secretariat for Religious Denominations, and the Government Department for Local Public Administration). The Council's powers cover prescriptive, administrative and financial aspects of the rights of persons belonging to national minorities to retain, develop and express their ethnic, cultural, linguistic and religious identity, as provided for in the Romanian Constitution and current legislation, and in the international treaties and conventions to which Romania is a party. The Council establishes and maintains contacts with representatives of organizations of citizens belonging to national minorities; makes proposals concerning the preparation of draft laws and government decisions in its sphere of competence; submits to the Government or its Secretary-General, as appropriate, proposals for the adoption of the administrative measures it considers necessary to deal with problems falling within its competence; maintains permanent links with the local authorities so as to identify and solve their specific problems; establishes and develops contacts with the international governmental and non-governmental organizations and bodies concerned with the rights of persons belonging to national minorities; gives opinions on draft laws and government decisions affecting the rights of persons belonging to minorities, etc.

237. The Council is made up of several working committees: the Committee on Education, Science and Youth; the Committee on Culture, Worship and the Media; the Committee on Legislation and Administration; the Committee on Social and Economic Affairs; the Committee on Financial Matters, etc. It supports radio and television broadcasts in minority languages and publications by organizations of citizens belonging to minorities. It allocates the annual State subsidies to the organizations of persons belonging to national minorities. One of the Council's ongoing concerns since its creation in 1993 has been the preparation of a draft law on the rights of persons belonging to national minorities. A draft text prepared by representatives of 15 organizations of persons belonging to national minorities is currently on the Romanian Parliament's agenda.

238. Information concerning the participation of persons belonging to national minorities in Romanian public life is to be found in paragraph 224 of this report, on application of the provisions of article 25 of the Covenant.

239. There have been no fundamental changes regarding education dispensed in minority languages since the submission of the third periodic report of Romania. One noteworthy innovation, however, has been the adoption by Parliament of the Education Act, a piece of legislation of especial significance, drafted along innovative lines with a view to ensuring the development of the Romanian education system on the basis of humanistic traditions and the values of democracy, so as to enable individuals to develop freely, fully and harmoniously and to become independent and creative human beings. This Act provides that "citizens of Romania have equal rights of access to all levels and forms of education, without distinction on account of social and material status, sex, race, nationality, or political or religious affiliation." (art. 5, para. 1.)

240. Regarding teaching in minority languages, the Act reflects the relevant constitutional provisions, expressly guaranteeing "the right of persons belonging to national minorities to learn their mother tongue and the right to be taught in that language" (art. 8, para. 2), and also establishing a mandatory requirement to study and assimilate the Romanian language, as the official language of the State (art. 8, para. 3).

241. The Act also provides for the introduction of religion as a compulsory subject in primary education, as an optional subject in lower secondary education, and as an extra subject in upper secondary education and vocational schools. The student, with the consent of the parent or legally appointed guardian, chooses the religion and denomination he or she wishes to study. The provisions of the Education Act also deal with the organization, by the Ministry of Education at the request of the religious denominations recognized by the State, of specific denominational education so as to meet their needs for trained staff. The curricula are drawn up by the denominations and approved by the State Secretariat for Religious Denominations and the Ministry of Education. Article 12 of the Act also provides that "the organization and contents of the teaching may not be structured on the basis of exclusive and discriminatory criteria of an ideological, political, religious or ethnic nature. Educational units and institutions created in response to religious or linguistic needs, in which the teaching reflects the choice of the parents or legally appointed guardians of the students, shall not be regarded as being based on exclusive and discriminatory criteria."

242. The organization of private education as an alternative or complement to State education is also permitted and regulated, provided that such education is "based on non-discriminatory principles, rejecting anti-democratic, xenophobic, chauvinistic and racist ideas, views and attitudes."

243. Chapter XII of the Education Act is entirely devoted to education dispensed in the languages of persons belonging to national minorities. Its nine articles contain specific provisions on the conducting of that education: the right to study and be taught in their mother tongue at all levels and in all forms of education, in compliance with the conditions laid down in the Act; the organization, in the light of local needs, of educational groups, sections or

units using the languages of persons belonging to national minorities - subject to the continuing obligation to learn and teach the official language (art. 119); establishment of specific arrangements for teaching Romanian in primary and lower and upper secondary schools in which academic subjects are taught in minority languages, as well as those subjects (i.e. Romanian history and geography) the teaching of which in Romanian is compulsory; introduction of the study, as a separate subject in upper secondary schools, of the history and traditions of national minorities, taught in the mother tongue (art. 20, para. 4); the possibility for students from national minorities who attend educational units in which the teaching takes place in Romanian, to study, if they so request, their mother tongue and its literature, together with the history and traditions of their national minority (art. 12); the possibility for persons from national minorities to enrol on university medical courses taught in their mother tongue in existing State university medical faculties, subject to the obligation to learn the specialized terminology in Romanian as well as in their mother tongue (art. 122, para. 2); the possibility of setting up, in State university education, on demand and as provided for in the Act, groups and sections in which teaching is conducted in minority languages so as to train the necessary staff in educational, cultural and artistic activities (art. 123); conditions governing the conducting of entrance and end-of-cycle examinations in the mother tongue (art. 124); proportional allocation of teaching staff from national minorities to the administrative and decision-making structures of educational units and establishments containing groups, classes or sections for national minorities, with due respect for the principle of professional competence (art. 126), etc.

244. During the 1994-1995 academic year teaching in Hungarian was provided at all levels: pre-school, primary, first- and second-cycle secondary, post-baccalaureate and university. In pre-university education, the network in which teaching takes place in Hungarian consists of 2,395 educational establishments and sections, or 8.4 per cent of Romania's entire school network (higher than the figure of 7.1 per cent for Magyars as a percentage of Romania's population).

245. The network of establishments and sections in which teaching is conducted in Hungarian accounts for 8.9 per cent of the total in pre-school education (or 1,127 establishments and sections out of a current national total of 12,665); 7.6 per cent in primary education years one to four (or 471 establishments and sections out of a national total of 6,162); 8.6 per cent in first-cycle secondary education (or 612 establishments and sections out of a total of 1,276); and 4.0 per cent in vocational and post-baccalaureate education (53 out of a total of 1,309). Eighteen fewer establishments and 38 fewer sections conduct teaching in Hungarian than in the 1993-1994 academic year, because educational establishments with only a small number of pupils have been amalgamated. It should be mentioned that there are also 375 fewer schools nationwide.

246. In pre-university education, 207,763 children and students of Hungarian origin study in Hungarian - 4.8 per cent of the total number of pupils attending school. About 50,000 children and students of Hungarian origin attend groups or classes in which the teaching is in Romanian. Thus, the total number of Hungarian pupils in pre-university education as a whole is about 258,000, or 6.0 per cent of the total national figure for pre-university students. At university level there are Hungarian-language teaching departments at Babeş-

Bolyai University in Cluj-Napoca, at the University of Medicine and Pharmacy and the Szentgyörgi István Academy of Art, both in Târgu-Mureş, and at Bucharest University.

247. There are 1,330 directors and deputy directors of Hungarian origin on the managerial staff of the 2,395 establishments and sections in which teaching takes place in Hungarian. Similarly, the regional inspectors-general in the departments of Covasna and Harghita and one of the deputy inspectors-general in the departments of Arad, Bihor and Mureş are of Hungarian origin. Fifty-four inspectors of Hungarian nationality directly monitor teaching conducted in Hungarian.

248. There are 302 school establishments and sections in which teaching is conducted in German, attended by 20,949 children and students - 1,000 more than in the 1993-1994 academic year. A substantial number of students from the German minority study in schools in which the teaching takes place in Romanian, and they also have the possibility of studying, on request, the German language as a subject in school (four hours per week for years one to four and three hours per week for years five to twelve). The school network for teaching in the national minority languages also includes establishments, sections and study groups in which the students can be taught or learn in the language of the Serbian, Ukrainian, Slovak, Czech, Bulgarian, Croatian, Turkish and Tatar, Russian, Polish, Armenian, Greek and Italian minorities.

249. In the framework of the State's efforts to secure fuller social integration of persons belonging to the Romany/Gipsy minority, a school programme has been started up to provide Romany/Gipsy children with an opportunity to learn the Romany language. Study groups for the language have been set up in eight pre-university educational establishments, and 302 pupils have selected this option. Four hours a week are devoted to teaching Romany in years one to four, and three a week in years five to twelve. In the town of Caracal there is also a nursery school currently attended by 30 children from that ethnic group.

250. For training teachers of the Romany language, who can then be more closely involved in the education of Romany/Gipsy children thereafter, special classes for Romany language and literature teachers have been set up in three teacher training colleges in Bucharest, Bacău and Târgu-Mureş, starting in the 1993-1994 academic year. In the 1994-1995 academic year 55 such students attended these teacher training colleges. Students on the programme include not only young people of Gipsy origin, but also Romanians who have agreed to go on to work as teachers in schools with a majority of Romany/Gipsy pupils.

251. The Educational Publishing House has published a special textbook to facilitate the teaching of Romany, and the Ministry of Education has prepared a curriculum for years one to four. An anthology of Romany/Gipsy literary texts (for years one to four) is due to appear during the 1995-1996 academic year. In this educational process increased importance is being attached to cooperation between the competent Romanian authorities and NGOs working in the field of Romany/Gipsy education and culture. Research will continue with a view to identifying the most appropriate means of providing Romany/Gipsy children with an education.

252. With regard to freedom to profess their own religion, persons belonging to national minorities benefit from the same constitutional provisions as do all other Romanian citizens. Article 6 of the Constitution provides that "the State recognizes and guarantees the right of persons belonging to national minorities to the preservation, development and expression of their [...] religious identity"; while article 29 defines the framework for the expression of freedom of conscience and religion in Romania as follows:

> "1. Freedom of thought, opinion and religion may not be restricted in any way. No one may be compelled to embrace an opinion or religion contrary to his own beliefs.
>
> 2. Freedom of conscience is guaranteed; it must be exercised in a spirit of tolerance and mutual respect.
>
> 3. Religious denominations shall be free, and organized in accordance with their own statutes, in compliance with the law.
>
> 4. In relations among denominations, any forms, means, acts or activities of religious enmity are prohibited.
>
> 5. Religious denominations shall be independent of the State and shall enjoy its support, inter alia through facilitation of religious ministration in the army, hospitals, prisons, hostels and orphanages.
>
> 6. Parents or legal tutors have the right to ensure, in accordance with their own convictions, the education of minors for whom they are responsible."

253. Article 32 of the Constitution establishes the freedom of religious education, in the following terms: "The State shall ensure freedom of religious education, in accordance with the specific requirements of each denomination. In State schools, religious education shall be organized and guaranteed by law." The State Secretariat for Religious Denominations, a central institution set up in 1992, supports all denominations on an equal basis, contributes to the development of religious education in theological colleges, and acts as a liaison between the denominations and central and local public administration. Through the Secretariat, the State contributes each month to financing the wage bill of the denominations and the costs of theology courses, and allocates funds annually for the construction, restoration and preservation of places of worship and articles of the cultural heritage in the care of the religious denominations.

254. Persons belonging to national minorities are among the members of the various religious denominations recognized in Romania, such as the Roman Catholic Church, the Evangelical Church (Augsburg Confession), the Reformed Church, the Evangelical Church (Synodic-Presbyterian), the Unitarian Church, the Armenian Church, Judaism, Islam, and the Ukrainian and Serbian Orthodox vicariates. These denominations are equal among themselves and before the law and the public authorities, without privileges and without discrimination. They are free and autonomous, and freely appoint their governing bodies and clergy without interference by the State. Clergy are trained by the denominations' own schools, faculties and colleges of theology, in the light of actual needs.

Denominations are free to use the mother tongue of the congregation in their worship.

255. The denominations have received considerable State support for the establishment of new educational units. At present they have 34 tertiary-level theology faculties and colleges (compared to four in 1989), 81 upper-secondary level seminaries (compared to 10 in 1989), and 30 post-secondary denominational schools of medicine. The Roman Catholic Church (whose members come from the Magyar, Romanian, Slovak and other communities), has seven higher education establishments, ten upper-secondary seminaries and four post-secondary medical schools. The various Protestant denominations (Magyars, Romanians and Romany/Gipsies) have four university establishments, five upper-secondary seminaries and two post-secondary medical schools. The Baptist denomination (Romanians and Magyars) has two university institutes, five seminaries and two post-secondary medical schools; the Pentecostal denomination (Romanians, Magyars, Romany/Gipsies and Germans) also has a university institute, two upper-secondary seminaries and one post-secondary medical school. The Seventh-day Adventists (Romanians and Magyars) have a theological institute, three seminaries and one specialized post-secondary school. The Christian Gospel denomination has one institute and one specialized post-secondary school. The Islamic faith (Turks and Tatars) has a theological seminary at Medgidia.

256. The State provides substantial support for the cultural life of national minorities. It is involved in financing the activities of cultural establishments (theatres, arts groups, museums, libraries, etc.), and in publication of newspapers and books in minority languages and production of radio and television broadcasts in those languages. Conditions conducive to closer international relations have also been created.

(a) Theatres: eleven Hungarian-language State theatres and departments, three German-language State theatres, one Yiddish theatre;

(b) Dozens of national and local publications in Hungarian, Turkish, German, Romany, Slovak and Czech, Serbian, Armenian, Bulgarian, Ukrainian and Russo-Lipovan. More than 20 publications in national minority languages are subsidized by the Council of National Minorities;

(c) Radio and television: daily broadcasts in Hungarian and German and weekly broadcasts in other languages on national radio, as well as weekly broadcasts from local stations; twice-weekly broadcasts in Hungarian and German and broadcasts for other national minorities (the programme entitled Convieţuiri) on the national television channels, and broadcasts from local television studios;

(d) Publication of books by the Kriterion publishing house, which specializes in books by authors from national minorities written in their mother tongue, and in translations of works written in minority languages, intended for the wider Romanian public.

257. In recent years the Government has devoted special attention to initiatives and activities whose principal aim is the prevention of acts of racism, racial discrimination and xenophobia, so as to guarantee that young

people are educated in a spirit of openness and tolerance, secure broad dissemination of the principles of democracy and human rights, and promote a climate of dialogue and tolerance among the various sections of Romanian society, including persons belonging to ethnic, linguistic and religious minorities.

258. One dimension of the democratic process has been reflected in the preparation and initiation of an extensive programme of education in human rights, addressed both to specialists and to the general public. Thus, every faculty of law includes human rights as a fundamental component of its training of lawyers, magistrates and officials responsible for securing application of laws. Human rights are also taught at the Police Academy (which has university status) and at the National School of Administration; and are included in the primary and secondary school curriculum, in the form of courses in civic education and human rights.

259. The need for action to ensure that human rights are widely disseminated and to consolidate the climate of tolerance in Romanian society led to the creation, by Parliament in 1991, of the Romanian Human Rights Institute, which is a beneficiary of the Centre for Human Rights programme of advisory services. A number of activities - such as seminars, debates and publications - have been organized with a view to promoting respect for human rights and tolerance and increasing public awareness of issues relating to implementation of the principles of human rights.

260. Romania also participates in international cooperative efforts to identify the most appropriate measures to combat acts of racism, racial discrimination and xenophobia. After the launching, in Strasbourg in December 1994, of the European Youth Campaign against Racism, Xenophobia, Anti-Semitism and Intolerance - "All Different, All Equal", scheduled to take place in 1995 and 1996 under the auspices of the Council of Europe, a Romanian National Foundation to coordinate the Youth Campaign against Racism, Anti-Semitism, Xenophobia and Intolerance (the RAXI Foundation) was set up, with the participation of interested NGOs, youth organizations from all the political parties and government institutions with competence in the fight against racism, anti-semitism, xenophobia and discrimination. The RAXI Foundation has been very active, organizing lectures, symposiums, seminars and round-table conferences on such highly topical subjects as "Workshops on Tolerance", "Tolerance in Political Life", and "Youth and the Campaign against Racism, Anti-Semitism, Xenophobia and Intolerance".

261. As part of the European Youth Campaign, a "Tolerance, Truth and Hope Week" was held in Romania from 9 to 16 July 1995 - an event which attracted about 2,000 young people from Romania and abroad. The scale of the initiative and the wide publicity that surrounded it guaranteed its success as a vehicle for promoting democratic values, dialogue and a spirit of tolerance.

262. Continuing close cooperation between the Romanian Government and the Council of Europe, UNESCO and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE) has resulted, inter alia, in the holding of an international seminar on tolerance, in Bucharest from 23 to 26 May 1995, which provided a very open forum for

discussion of the importance of promoting tolerant attitudes in the world of education, in the media and among local authorities.